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1972 ANNOTATED

Issued December 2020

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

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PUBLISHER'S FOREWORD

Statutes

The 2020 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2020 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2019 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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December 2020 LexisNexis

SCHEDULE OF NEW SECTIONS

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75-71-413. Prevention of financial exploitation of vulnerable persons; certain broker-dealers and investment advisers required to file report under Mississippi Vulnerable Persons Act must forward copy of report to administrator; initiation of internal review of suspected financial exploitation.

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REGULATION OF TRADE, COMMERCE AND INVESTMENTS

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INTEREST, FINANCE CHARGES, AND OTHER CHARGES

GENERAL PROVISIONS

§ 75-17-1. Legal rates of interest and finance charges.

JUDICIAL DECISIONS

I. Under Current Law.

8. Prejudgment interest.

Estate was not due interest on the judgment it recovered from the co-owner of a corporation because its claim under a lease was not liquidated when it originally was made, as the chancery court had to determine the damages period before it could award any damages under the lease; there was no indication in the record or the judgment on remand that the co-owner acted in bad faith. Lane v. Lampkin, 234 So. 3d 338, 2017 Miss. LEXIS 283 (Miss. 2017).

§ 75-17-7. Interest on judgments and decrees.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Interest allowable from date of verdict or judgment.
3. Judgments and decrees based on contract.
6. Insurance cases.

1. In general.

Trial court's judgment with respect to a judgment interest award was reversed where it considered the definition of interest rate to encompass evidence of rates of return when it was mandated on remand with the task of determining the applicable interest rate and entering an order requiring payment of that interest, and it rejected the only rates of interest properly introduced. City of Gulfport v. Dedeaux Util. Co., 237 So. 3d 164, 2018 Miss. LEXIS 66 (Miss. 2018).

Trial court did not abuse its discretion in awarding an assignee prejudgment interest because it imposed the interest rate pursuant to the terms of the document that a debtor willingly signed; the trial court also found that the guarantors had waived the issue because they made no real challenge at trial as to the interest calculations made by the assignee. Biel REO, LLC v. Lee Freyer Kennedy Crestview, LLC, 242 So. 3d 833, 2018 Miss. LEXIS 84 (Miss. 2018).

When a town and school district prevailed in litigation against a county over the county's failure to collect a gaming fee, the town and school district were entitled to post-judgment interest because the county did not show a statutory exception to an award of such interest. Tunica County v. Town of Tunica, 227 So. 3d 1007, 2017 Miss. LEXIS 179 (Miss. 2017).

County court properly awarded prejudgment interest to a company because the company and a contractor were operating under an open account, a type of unwritten contract, and thus, the company had to be granted pre-judgment interest if the contractor's debt was liquidated; however, the county court erred in determining the date pre-judgment interest began, and it should have calculated pre-judgment interest from the date the breach occurred. Knights Marine & Indus. Servs. v. Gulfstream Enters., 216 So. 3d 1164, 2017 Miss. App. LEXIS 207 (Miss. Ct. App. 2017).

2. Interest allowable from date of verdict or judgment.

In plaintiff's civil suit against the casino that pressed charges against him for passing worthless checks, the district court did not err by awarding prejudgment interest during period between the order granting summary judgment and entry of final judgment because record reflected that the district court did not intend order granting summary judgment to be a final judgment as it did not expressly dismiss suit. Harvey v. Caesars Entm't Operating Co., 790 Fed. Appx. 582, 2019 U.S. App. LEXIS 31136 (5th Cir. Miss. 2019).

Circuit court properly denied the taxpayers' motion for prejudgment interest because, while the county detained money that was overdue so as to justify the purpose for which prejudgment interest was awarded and the taxpayers were owed a refund for the overpayment of taxes, which were liquidated, the taxpayers failed to make demand, as required, for prejudgment interest in their pleadings, and there was no statutory authority mandating prejudgment interest. Gulfport Partners V, L.P. v. Harrison Cty. Bd. of Supervisors & Tal Flurry, 231 So. 3d 234, 2017 Miss. App. LEXIS 292 (Miss. Ct. App.), cert. denied, — So. 3d —, 2017 Miss. LEXIS 466 (Miss. 2017), cert. denied, — So. 3d —, 2017 Miss. LEXIS 467 (Miss. 2017), cert. denied, — So. 3d —, 2017 Miss. LEXIS 473 (Miss. 2017), cert. denied, — So. 3d —, 2017 Miss. LEXIS 478 (Miss. 2017).

3. Judgments and decrees based on contract.

Because neither the circuit court nor the contracts specified that the interest was to be computed on a compound basis,

interest was to be computed on a simple basis at the 1.5 percent rate noted in the contract and the circuit court's order. Roberts Contr., Inc. v. Mersino Dewatering Inc., 270 So. 3d 994, 2018 Miss. App. LEXIS 474 (Miss. Ct. App. 2018).

Estate was not due interest on the judgment it recovered from the co-owner of a corporation because its claim under a lease was not liquidated when it originally was made, as the chancery court had to determine the damages period before it could award any damages under the lease; there was no indication in the record or the judgment on remand that the co-owner acted in bad faith. Lane v. Lampkin, 234 So. 3d 338, 2017 Miss. LEXIS 283 (Miss. 2017).

Because the judgment was not based on a contract with a set interest rate, the trial court had discretion to set the rate of interest, as well as the date from which interest would accrue. Ground Control, LLC v. Capsco Indus., 214 So. 3d 232, 2017 Miss. LEXIS 93 (Miss. 2017).

6. Insurance cases.

Trial court rightly entered an order dismissing the insured's case with prejudice as no dispute remained for adjudication and denying the insured's request for prejudgment interest because the insurer invoked the appraisal provision contained in the insurance contract, which led to the payment of $ 462,761.89 for the insured; after the parties had resolved the claim's value through that contractual process, the trial court properly granted the insurer's motion stating that the parties had resolved the dispute and that the trial court had nothing else to decide; and this statute had no application to the insured's case in which no judgment or decree had been entered. Sweet Valley Missionary Baptist Church v. Alfa Ins. Corp., 192 So. 3d 990, 2016 Miss. LEXIS 230 (Miss. 2016).

CHAPTER 21.

TRUSTS AND COMBINES IN RESTRAINT OR HINDRANCE OF TRADE

§ 75-21-1. Trust and combine; defined.

JUDICIAL DECISIONS

ANALYSIS

2. Construction and application, generally.
3. Particular applications.

2. Construction and application, generally.

Timber buyer was entitled to a directed verdict on a timber seller's Miss. Code Ann. § 75-21-1 claim because insufficient evidence showed an agreement between market participants. Ga. Pac. Corp. v. Cook Timber Co., 194 So. 3d 118, 2016 Miss. LEXIS 269 (Miss. 2016).

3. Particular applications.

Dismissal of the State's Mississippi Antitrust Act claim (MAA) against the executives of an auto part manufacturer was affirmed where the complaint alleged no wholly intrastate transactions that would have made the alleged illegal cartel punishable under the MAA. State ex rel. Fitch v. Yazaki N. Am., Inc., 294 So. 3d 1178, 2020 Miss. LEXIS 100 (Miss. 2020).

§ 75-21-3. Additional contracts or combinations not allowed by law.

JUDICIAL DECISIONS

3. Particular applications — illegal contract or combination.

Timber buyer was entitled to judgment on a timber seller's Miss. Code Ann. § 75-21-3 claim because (1) nothing showed the buyer monopolized or tried to monopolize the buyer's industry, and (2) it was not illegal for the buyer to stockpile timber bought at the lowest possible price in anticipation of higher prices. Ga. Pac. Corp. v. Cook Timber Co., 194 So. 3d 118, 2016 Miss. LEXIS 269 (Miss. 2016).

CHAPTER 23.

FAIR TRADE LAWS

Article 3. Sale of Cigarettes Intended for Export Prohibited. 75-23-31

ARTICLE 3.

SALE OF CIGARETTES INTENDED FOR EXPORT PROHIBITED.

§ 75-23-37. Revocation and suspension of licenses and permits to sell tobacco; seizure, forfeiture, and destruction of contraband cigarettes.

HISTORY: Laws, 2000, ch. 596, § 4, eff from and after passage (approved May 20, 2000); brought forward without change, Laws, 2020, ch. 331, § 3, eff from and after July 1, 2020.

Editor's Note — This section was brought forward without change by Laws of 2020, ch. 331, § 3, effective from and after July 1, 2020. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment brought the section forward without change.

CHAPTER 24.

REGULATION OF BUSINESS FOR CONSUMER PROTECTION

Pyramid Sales Schemes; Cancellation of Franchises. 75-24-51
Pyramid promotional schemes. 75-24-71
Bad Faith Assertions of Patent Infringement. 75-24-351

GENERAL PROVISIONS

§ 75-24-5. Prohibited acts or practices.

Cross References — Failure to comply with § 25-34-47(1) through (5) constitutes an unfair or deceptive act under this section.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
3. Injunctive relief
4. Standing.

1. In general.

Drug manufacturer violated the Mississippi Consumer Protection Act by publishing average wholesale prices that had no predictable relationship to what consumers paid for its drugs while knowing that the State relied on that information in determining estimated acquisition cost. Watson Labs., Inc. v. State, 241 So. 3d 573, 2018 Miss. LEXIS 7 (Miss. 2018).

3. Injunctive relief

Trial court's finding that the alleged unfair trade practices were too remote in time to support the State's claim for injunctive relief under the Mississippi Consumer Protection Act was affirmed where the executives responsible were convicted of federal crimes and had to pay hefty penalties, and thus, the State had failed to allege any facts that support the danger of a present or future unfair trade practice warranting injunctive relief to protect the public's interest. State ex rel. Fitch v. Yazaki N. Am., Inc., 294 So. 3d 1178, 2020 Miss. LEXIS 100 (Miss. 2020).

4. Standing.

Business and governmental entities lacked standing to pursue consumer claims alleging that security vulnerabilities rendered microprocessors defective because they did not use their computers for personal, family, or household purposes, but instead used them in daily operations. As to consumers, an affirmative misrepresentation was not required to support a claim because this statute allows omissions claims. In re Intel Corp. CPU Mktg., Sales, Practices and Prods. Liab. Litig., — F. Supp. 3d —, 2020 U.S. Dist. LEXIS 53829 (D. Or. Mar. 27, 2020).

RESEARCH REFERENCES

ALR.

Validity, Construction, and Application of State Statute Forbidding Unfair Trade Practice or Competition by Discriminatory Allowance of Rebates, Commissions, Discounts, or the Like. 83 A.L.R.6th 419.

§ 75-24-9. Injunction to restrain or prevent violation.

JUDICIAL DECISIONS

ANALYSIS

1. Jurisdiction.
2. Venue.
3. Injunctive relief

1. Jurisdiction.

Statute does nothing more than presume that a Mississippi Consumer Protection Act injunction, standing alone, will be filed in county or chancery court, through the Mississippi Constitution, the chancery court's jurisdiction is limited to specific areas, including all matters in equity, and a a result, injunctions must be filed in the chancery court. State v. Walgreen Co., 250 So. 3d 465, 2018 Miss. LEXIS 339 (Miss. 2018).

Application of the State's equitable claims is not enough to limit jurisdiction to the chancery court, not even through the application of the statute. State v. Walgreen Co., 250 So. 3d 465, 2018 Miss. LEXIS 339 (Miss. 2018).

Chancery court correctly used its discretion to transfer the State's case against pharmacies, allowing the issues to proceed in front of a circuit-court jury, because the complaint concerned a provider agreement (a contract), its terms, and the parties who failed to abide by the arrangement; while the equitable issues pleaded were relevant, the legal issues that flowed from the pharmacies' alleged inflated reimbursement requests predominated the State's claims and requests for relief. State v. Walgreen Co., 250 So. 3d 465, 2018 Miss. LEXIS 339 (Miss. 2018).

Through a proper application of its discretion, the chancery court did not err in its decision to transfer the matter to the circuit court, and any apparent conflict with that decision and the statute's provision was inconsequential; accordingly, an injunction under the statute can be obtained in circuit court when the original court or the transferring court considers it appropriate under the circumstances. State v. Walgreen Co., 250 So. 3d 465, 2018 Miss. LEXIS 339 (Miss. 2018).

2. Venue.

Registered Agents Act effectively makes the location of a corporation's registered agent irrelevant to the venue analysis; because the Registered Agents Act excludes consideration of the location of a corporation's registered agent from the question of venue, the Mississippi Consumer Protection Act's venue statute provides no choice of venue for foreign corporations. Purdue Pharma L.P. v. State, 256 So. 3d 1, 2018 Miss. LEXIS 415 (Miss. 2018).

Because no person resided or had a principal place of business in Mississippi, the consent language contained in the statute did not apply, and the statute as a whole failed to provide a venue option for foreign corporations; the consent language contained in the statute applies only to Mississippi defendants. Purdue Pharma L.P. v. State, 256 So. 3d 1, 2018 Miss. LEXIS 415 (Miss. 2018).

3. Injunctive relief

Trial court's finding that the alleged unfair trade practices were too remote in time to support the State's claim for injunctive relief under the Mississippi Consumer Protection Act was affirmed where the executives responsible were convicted of federal crimes and had to pay hefty penalties, and thus, the State had failed to allege any facts that support the danger of a present or future unfair trade practice warranting injunctive relief to protect the public's interest. State ex rel. Fitch v. Yazaki N. Am., Inc., 294 So. 3d 1178, 2020 Miss. LEXIS 100 (Miss. 2020).

§ 75-24-15. Action or counterclaim by individual suffering loss; class actions prohibited.

JUDICIAL DECISIONS

ANALYSIS

4. Private right of action.
5. Appeals.

4. Private right of action.

Chancery court properly concluded that Miss. Code Ann. § 75-24-15(2) did not apply where the State failed to explain how, in a section titled "Private Actions," it could have brought a public action, which was not authorized or contemplated under Miss. Code Ann. § 75-24-15(1), and received the benefit of the section without also complying with the remaining provisions. Watson Labs., Inc. v. State, 241 So. 3d 573, 2018 Miss. LEXIS 7 (Miss. 2018).

5. Appeals.

Drug manufacturer had not waived its right to raise the State's noncompliance with Miss. Code Ann. § 75-24-15(2) even though it waited nearly seven years to raise it where it promptly filed a motion to dismiss based on the statute once it became aware of another case in which the

court had awarded damages under the statute even though the State had not raised it. Watson Labs., Inc. v. State, 241 So. 3d 573, 2018 Miss. LEXIS 7 (Miss. 2018).

§ 75-24-17. Proceedings to compel filing of statements or reports or obedience of subpoena, investigative demand, or court order; use of court-ordered testimony.

JUDICIAL DECISIONS

1. Ripeness.

District court erred in granting injunctive relief prohibiting state attorney general from enforcing a non-self-executing administrative subpoena issued to plaintiff because neither the issuance of the subpoena nor the possibility of some future enforcement action created an imminent threat of irreparable injury ripe for adjudication. Google, Inc. v. Hood, 822 F.3d 212, 2016 U.S. App. LEXIS 9109 (5th Cir. Miss. 2016).

PYRAMID SALES SCHEMES; CANCELLATION OF FRANCHISES

Sec.

75-24-51. Definitions.
75-24-53. Sales of participation in pyramid sales scheme forbidden; franchises to be terminated only on ninety days' notice.
75-24-59. Injunctive relief.

§ 75-24-51. Definitions.

As used in Sections 75-24-51 through 75-24-61, the following words and phrases shall have the meanings as defined in this section unless the context clearly indicates otherwise:

(a) The term "goods" includes any personal property, real property, or any combination thereof;

(b) The term "person" includes an individual, corporation, trust, estate, partnership, unincorporated association, or any other legal or commercial entity;

(c) "Franchise" means a written arrangement for a definite or indefinite period, in which a person for a consideration grants to another person a license to use a trade name, trademark, service mark, or related characteristic, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement or otherwise; except that, the term "franchise" shall not apply to persons engaged in sales from warehouses or like places of storage, leased departments of retail stores, or places of original manufacture; and

(d) "Consideration" as used in Sections 75-24-51 through 75-24-61 does not include payment for sales demonstration equipment and materials furnished at cost for use in making sales and not for resale or payments amounting to less than One Hundred Dollars ($100.00) when computed on an annual basis.

HISTORY: Laws, 1975, ch. 362, § 1, eff from and after July 1, 1975; Laws, 2018, ch. 394, § 5, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment rewrote the section, which read: "As used in Sections 75-24-51 through 75-24-61: (1) The term 'sale or distribution' includes the acts of leasing, renting or consigning; (2) The term 'goods' includes any personal property, real property, or any combination thereof; (3) The term 'other property' includes a franchise, license distributorship or other similar right, privilege, or interest; (4) The term 'person' includes an individual, corporation, trust, estate, partnership, unincorporated association, or any other legal or commercial entity; (5) The term 'pyramid sales scheme' includes any plan or operation for the sale or distribution of goods, services, or other property wherein a person for a consideration acquires the opportunity to receive a pecuniary benefit, which is not primarily contingent on the volume or quantity of goods, services, or other property sold or distributed to be sold or distributed to persons for purposes of resale to consumers, and is based upon the inducement of additional persons, by himself or others, regardless of number, to participate in the same plan or operation; (6) 'Franchise' means a written arrangement for a definite or indefinite period, in which a person for a consideration grants to another person a license to use a trade name, trademark, service mark, or related characteristic, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement or otherwise; except that, the term 'franchise' shall not apply to persons engaged in sales from warehouses or like places of storage, leased departments of retail stores, or places of original manufacture; and (7) 'Consideration' as used in Sections 75-24-51 through 75-24-61 does not include payment for sales demonstration equipment and materials furnished at cost for use in making sales and not for resale or payments amounting to less than one hundred dollars ($100.00) when computed on an annual basis."

§ 75-24-53. Sales of participation in pyramid sales scheme forbidden; franchises to be terminated only on ninety days' notice.

No person who has granted a franchise to another person shall cancel or otherwise terminate any such franchise agreement without notifying such person of the cancellation, termination or failure to renew in writing at least ninety (90) days in advance of the cancellation, termination or failure to renew, except that when criminal misconduct, fraud, abandonment, bankruptcy or insolvency of the franchisee, or the giving of a no account or insufficient funds check is the basis or grounds for cancellation or termination, the ninety-day notice shall not be required.

HISTORY: Laws, 1975, ch. 362, § 2, eff from and after July 1, 1975; Laws, 2018, ch. 394, § 6, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment deleted the first sentence, which read: "No person shall, directly or through the use of agents or intermediaries, in connection with the sale, distribution, or lease of goods, services, or other property, sell, offer or attempt to sell a participation or the right to participate in a pyramid sales scheme."

§ 75-24-55. Statements by franchisors as to past or potential earnings.

HISTORY: Laws, 1975, ch. 362, § 3, eff from and after July 1, 1975; brought

forward without change, Laws, 2018, ch. 394, § 7, eff from and after July 1, 2018.

Editor's Notes — This section was brought forward without change by Laws of 2018, ch. 394, § 7, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

Amendment Notes — The 2018 amendment brought the section forward without change.

§ 75-24-59. Injunctive relief.

In addition to other penalties and remedies provided in Sections 75-24-51 through 75-24-61, whenever it appears that any person is engaged or is about to engage in any act or practice which is prohibited by Sections 75-24-51 through 75-24-61, the Attorney General may bring an action in the name of the state pursuant to the provisions of Section 75-24-9 in order to enjoin any such act or practice.

HISTORY: Laws, 1975, ch. 362, § 5, eff from and after July 1, 1975; Laws, 2018, ch. 394, § 8, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment deleted "constitutes a pyramid sales scheme or which" following "engage in any act or practice which."

§ 75-24-61. Penalties.

HISTORY: Laws, 1975, ch. 362, § 6, eff from and after July 1, 1975; brought forward without change, Laws, 2018, ch. 394, § 9, eff from and after July 1, 2018.

Editor's Notes — This section was brought forward without change by Laws of 2018, ch. 394, § 9, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

Amendment Notes — The 2018 amendment brought the section forward without change.

§ 75-24-63. Provisions not applicable to retailers covered under Inventory Repurchase Law.

HISTORY: Laws, 1997, ch. 318, § 14, eff from and after July 1, 1997; brought forward without change, Laws, 2018, ch. 394, § 10, eff from and after July 1, 2018.

Editor's Notes — This section was brought forward without change by Laws of 2018, ch. 394, § 10, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

Amendment Notes — The 2018 amendment brought the section forward without change.

PYRAMID PROMOTIONAL SCHEMES.

Sec.
75-24-71. Definitions.
75-24-73. Pyramid promotional scheme prohibited.
75-24-75. Injunctive relief.
75-24-77. Penalties.

§ 75-24-71. Definitions.

As used in Sections 75-24-71 through 75-24-77, the following words and phrases shall have the meanings as described in this section, unless the context clearly indicates otherwise:

(a) "Bona fide inventory repurchase program" means a program by which an entity repurchases from a salesperson current and marketable inventory in the possession of the salesperson, upon request and upon commercially reasonable terms, when the salesperson's business relationship is terminated.

(b) "Commercially reasonable terms" means the repurchase of current and marketable inventory within twelve (12) months after the date of purchase at not less than ninety percent (90%) of the original net cost, less appropriate set-offs and legal claims, if any.

(c) "Compensation" means a payment of any money, thing of value, or financial benefit conferred in return for inducing another person to participate in a pyramid promotional scheme.

(d) "Consideration" as used in Sections 75-24-71 through 75-24-77 means the payment of cash or the purchase of goods, services, or intangible property. The term does not include the purchase of goods or services furnished at cost to be used in making sales and not for resale, or time and effort spent in pursuit of sales or recruiting activities.

(e) "Inventory" includes both goods and services, including company-produced promotional materials, sales aids, and sales kits that an entity requires independent salespersons to purchase.

(f) "Inventory loading" means the requirement or encouragement by a plan or operation that its independent salesperson purchase inventory in an amount that exceeds the amount that the salesperson can expect to resell for ultimate consumption or to use or consume in a reasonable time period, or both.

(g) "Promote" means to contrive, prepare, establish, plan, operate, advertise, or otherwise induce or attempt to induce another person to participate in a pyramid promotional scheme.

(h) "Pyramid promotional scheme" means any plan or operation by which a person gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other persons into the plan or operation rather than from the sale and consumption of goods, services, or intangible property by a participant or other persons introduced into the plan or operation. The term includes any plan or operation under

which the number of people who may participate is limited either expressly or by the application of conditions affecting the eligibility of a person to receive compensation under the plan or operation, or any plan or operation under which a person, on giving any consideration, obtains any goods, services, or intangible property in addition to the right to receive compensation.

HISTORY: Laws, 2018, ch. 394, § 1, eff from and after July 1, 2018.

§ 75-24-73. Pyramid promotional scheme prohibited.

(1) A person may not establish, promote, or operate any pyramid promotional scheme. Any limitation regarding the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan does not change the identity of the plan as a pyramid promotional scheme.

(2) The provisions of this section may not be construed to prohibit a plan or operation, or to define a plan or operation as a pyramid promotional scheme, if the participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services, or intangible property by participants for personal use, consumption, or resale if both of the following conditions are met: (a) the plan or operation does not cause inventory loading, and (b) the plan or operation implements a bona fide inventory repurchase program.

(3) An entity must clearly describe a bona fide inventory repurchase program in its recruiting literature, sales manual, or contracts with independent salespersons. The recruiting literature, sales manual, or contract must disclose any inventory that is not eligible for repurchase under the program.

(4) A bona fide inventory repurchase program is not required to apply to inventory that is no longer within the inventory's commercially reasonable use or shelf life period or has been used or opened.

(5) Before a salesperson of the entity purchases any inventory, the entity must clearly describe the inventory that is excluded from the entity's bona fide inventory repurchase program as seasonal, discontinued, or special promotion products and the inventory that is not subject to the entity's bona fide inventory repurchase program.

HISTORY: Laws, 2018, ch. 394, § 2, eff from and after July 1, 2018.

§ 75-24-75. Injunctive relief.

In addition to other penalties and remedies provided in Sections 75-24-71 through 75-24-77, whenever it appears that any person is engaged or is about to engage in any act or practice which constitutes a pyramid sales scheme or which is prohibited by Sections 75-24-71 through 75-24-77, the Attorney General may bring an action in the name of the state pursuant to the provisions of Section 75-24-9 in order to enjoin any such act or practice.

HISTORY: Laws, 2018, ch. 394, § 3, eff from and after July 1, 2018.

§ 75-24-77. Penalties.

Any person willfully violating any of the provisions of Section 75-24-73 is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for a term not to exceed six (6) months or by both such fine and imprisonment.

HISTORY: Laws, 2018, ch. 394, § 4, eff from and after July 1, 2018.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT

Sec.
75-24-359. Repeal of Sections 75-24-351 through 75-24-359 [Repealed effective July 1, 2021].

§ 75-24-351. Definitions [Repealed effective July 1, 2021].

HISTORY: Laws, 2015, ch. 416, § 1, eff from and after July 1, 2015; reenacted without change, Laws, 2018, ch. 359, § 1, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 359, § 1, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Laws of 2018, ch. 359, § 6, effective July 1, 2018, amended Laws of 2015, ch. 416, § 5, to delete the repealer for this section, which was to become effective July 1, 2018. For repeal of this section, see § 75-24-359.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-24-353. Bad faith assertions of patent infringement; exemptions [Repealed effective July 1, 2021].

HISTORY: Laws, 2015, ch. 416, § 2, eff from and after July 1, 2015; reenacted without change, Laws, 2018, ch. 359, § 2, eff from and after July 1, 2018.

Editor's Notes — Laws of 2018, ch. 359, § 6, effective July 1, 2018, amended Laws of 2015, ch. 416, § 5, to delete the repealer for this section, which was to become effective July 1, 2018. For repeal of this section, see § 75-24-359.

This section was reenacted without change by Laws of 2018, ch. 359, § 2, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-24-355. Enforcement [Repealed effective July 1, 2021].

HISTORY: Laws, 2015, ch. 416, § 3, eff from and after July 1, 2015; reenacted without change, Laws, 2018, ch. 359, § 3, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 359, § 3, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Laws of 2018, 359, § 6, effective July 1, 2018, amended Laws of 2015, ch. 416, § 5, to delete the repealer for this section, which was to become effective July 1, 2018. For repeal of this section, see § 75-24-359.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-24-357. Remedies [Repealed effective July 1, 2021].

HISTORY: Laws, 2015, ch. 416, § 4, eff from and after July 1, 2015; reenacted without change, Laws, 2018, ch. 359, § 4, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 359, § 4, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Laws of 2018, ch. 359, § 6, effective July 1, 2018, amended Laws of 2015, ch. 416, § 5, to delete the repealer for this section, which was to become effective July 1, 2018. For repeal of this section, see § 75-24-359.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-24-359. Repeal of Sections 75-24-351 through 75-24-359 [Repealed effective July 1, 2021].

Sections 75-24-351 through 75-24-359, Mississippi Code of 1972, shall stand repealed on July 1, 2021.

HISTORY: Laws, 2018, ch. 359, § 5, eff from and after July 1, 2018.

CHAPTER 27.

WEIGHTS AND MEASURES

ARTICLE 3.

WEIGHTS AND MEASURES OF PARTICULAR COMMODITIES.

§ 75-27-113. Measure of timber.

JUDICIAL DECISIONS

1. Breach of contract.

It was error to grant a timber buyer a directed verdict on a timber seller's breach of contract claim because (1) the buyer's scale tickets' lack of information required by Miss. Code Ann. § 75-27-113(4) on docking the seller's wood raised a rebuttable presumption of improper docking, and (2) reasonable jurors could find the seller's wood was culled to take quality wood without paying, not the seller's failure to meet the buyer's quality

standards. Ga. Pac. Corp. v. Cook Timber Co., 194 So. 3d 118, 2016 Miss. LEXIS 269 (Miss. 2016).

CHAPTER 29.

SALE AND INSPECTION OF FOOD AND DRUGS

Article 1.	Adulterated and Misbranded Food.	75-29-1
Article 15.	Bottled Drinking Water.	75-29-801
Article 21.	Cottage Food Operations.	75-29-951

ARTICLE 1.

ADULTERATED AND MISBRANDED FOOD.

Sec.
75-29-19. State Board of Health charged with enforcement of this chapter; regulatory authority not applicable to vending machines or micro markets.

§ 75-29-19. State Board of Health charged with enforcement of this chapter; regulatory authority not applicable to vending machines or micro markets.

The State Board of Health is hereby charged with the enforcement of this chapter. The State Board of Health shall have the authority to establish such rules and regulations not inconsistent with this chapter as will best carry its provisions into effect, unless regulation of food as defined in this chapter is otherwise authorized by law. However, the regulatory authority provided to the board under this section shall not apply to the regulation of a vending machine or micro market as defined in Section 69-1-18, or to the food and beverages sold therefrom.

HISTORY: Codes, Hemingway's 1917, § 4671; 1930, § 4974; 1942, § 7124; Laws, 1910, ch. 132; Laws, 1997, ch. 430, § 6, eff from and after July 1, 1997; Laws, 2019, ch. 338, § 2, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added the last sentence.

ARTICLE 15.

BOTTLED DRINKING WATER.

§ 75-29-805. Fees.

HISTORY: Laws, 1989, ch. 312, § 3; Laws, 2016, ch. 510, § 62, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 62, eff from and after passage (approved July 1, 2020).

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 473, § 62. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

Amendment Notes — The 2020 amendment reenacted the section without change.

ARTICLE 21.

COTTAGE FOOD OPERATIONS.

Sec.
75-29-951. Regulation of cottage food operations.

§ 75-29-951. Regulation of cottage food operations.

(1)(a) A cottage food operation must comply with the applicable requirements of this section but is exempt from the permitting requirements of Section 41-3-18 if the cottage food operation complies with this section and has annual gross sales of cottage food products that do not exceed Thirty-five Thousand Dollars ($35,000.00).

(b) For purposes of this subsection, a cottage food operation's annual gross sales include all sales of cottage food products at any location, regardless of the types of products sold or the number of persons involved in the operation. A cottage food operation must provide the department, upon request, with written documentation to verify the operation's annual gross sales.

(2) A cottage food operation may not sell cottage food products over the Internet, by mail order, or at wholesale or to a retail establishment; however, this does not prohibit the advertising of cottage food products over the Internet, including through social media. Cottage food products are nonpotentially hazardous food products as defined by the department.

(3) A cottage food operation may only sell cottage food products which are prepackaged with a label affixed that contains the following information:

(a) The name and address of the cottage food operation;

(b) The name of the cottage food product;

(c) The ingredients of the cottage food product, in descending order of predominance by weight;

(d) The net weight or net volume of the cottage food product;

(e) Allergen information as specified by federal labeling requirements;

(f) Appropriate nutritional information as specified by federal labeling requirements, if any nutritional claim is made; and

(g) The following statement printed in at least ten-point type in a color that provides a clear contrast to the background of the label: "Made in a cottage food operation that is not subject to Mississippi's food safety regulations."

(4) This section does not exempt a cottage food operation from any federal tax law, rule, regulation, or certificate that applies to all cottage food operations.

(5)(a) The department may investigate any complaint that alleges that a cottage food operation has violated an applicable provision of this section or rule adopted under this section.

(b) Only upon receipt of a complaint, the department's authorized officer or employee may enter and inspect the premises of a cottage food operation to determine compliance with this section and department rules. A cottage food operation's refusal to permit the department's authorized officer or employee entry to the premises or to conduct the inspection is grounds for disciplinary action pursuant to Section 41-3-59.

(6) This section does not apply to a person operating under a food permit issued pursuant to Section 41-3-18.

HISTORY: Laws, 2013, ch. 481, § 1, eff from and after passage (approved April 1, 2013); Laws, 2020, ch. 383, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (1)(a), substituted "Thirty-five Thousand Dollars ($35,000.00)" for "Twenty Thousand Dollars ($20,000.00)"; in (2), in the first sentence, deleted "or offer for sale" following "may not sell," and added "however, this does not...including through social media"; in (3), rewrote (f), which read: "If any nutritional claim is made, appropriate nutritional information as specified by federal labeling requirements"; and made minor stylistic and punctuation changes.

CHAPTER 31.

MILK AND MILK PRODUCTS

ARTICLE 1.

GENERAL PROVISIONS.

§ 75-31-65. Regulation of milk and milk products by State Board of Health.

HISTORY: Laws, 1999, ch. 439, § 1; Laws, 2016, ch. 510, § 63, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 63, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 473, § 62. Since the language of the section as it appears in the main volume is

unaffected by the reenactment of the section, it is not reprinted in this supplement.

Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 75-31-65. Regulation of milk and milk products by State Board of Health.

CHAPTER 35.
MEAT INSPECTION

Article 1. Inspection Requirements; Adulteration and Misbranding. 75-35-1

ARTICLE 1.
INSPECTION REQUIREMENTS; ADULTERATION AND MISBRANDING.

Sec.

75-35-15. Labeling of receptacles or covering of meat or meat food products; labeling requirements generally; standards of identity or fill; false or misleading labels.

§ 75-35-15. Labeling of receptacles or covering of meat or meat food products; labeling requirements generally; standards of identity or fill; false or misleading labels.

(1) When any meat or meat food product has been inspected as hereinbefore provided and marked "Mississippi inspected and passed" or appropriate marking shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this chapter is maintained, the person, firm, or corporation preparing said product shall cause a label to be attached to said can, pot, tin, canvas, or other receptacle or covering, under supervision of an inspector, which label shall state that the contents thereof have been "Mississippi inspected and passed" or appropriate marking under the provisions of this chapter, and no inspection and examination of meat or meat food products deposited or enclosed in cans, tins, pots, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this chapter is maintained shall be deemed to be complete until such meat or meat food products have been sealed or enclosed in said can, tin, pot, canvas, or other receptacle or covering under the supervision of an inspector.

(2) All carcasses, parts of carcasses, meat and meat food products inspected at any establishment under the authority of this chapter and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers, as the commissioner may require, the information required under paragraph (k) of Section 75-35-3.

(3) The commissioner, whenever he determines such action is necessary for the protection of the public, may prescribe:

(a) The styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling of any products or animals subject to this article or Article 3 of this chapter; and

(b) Definitions and standards of identity or composition for items subject to this article and standards of fill of container for such products not inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act, or under the Federal Meat Inspection Act, and there shall be consultation between the commissioner and the Secretary of Agriculture of the United States prior to the issuance of such standards to avoid inconsistency between such standards and the federal standards.

(4) No item or product subject to this article shall be sold or offered for sale by any person, firm, or corporation, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the commissioner, are permitted. A food product that contains cultured animal tissue produced from animal cell cultures outside of the organism from which it is derived shall not be labeled as meat or a meat food product. A plant-based or insect-based food product shall not be labeled as meat or a meat food product.

(5) If the commissioner has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any item subject to this article is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the marking, labeling or container does not accept the determination of the commissioner, such person, firm, or corporation may request a hearing, but the use of the marking, labeling, or container shall, if the commissioner so directs, be withheld pending hearing and final determination by the commissioner. Any party aggrieved by such final determination may, within thirty (30) days after receipt of notice of such final determination, effect an appeal therefrom to the chancery court of the county in which such party resides or in which the principal place of his business is domiciled; and, on appeal, such chancery court shall affirm, modify, or set aside the commissioner's final determination.

HISTORY: Codes, 1942, § 4575-157; Laws, 1968, ch. 245, § 7, eff from and after July 1, 1968; Laws, 2019, ch. 303, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment, in (3), redesignated (3)(1) and (3)(2) as (3)(a) and (3)(b), and added "and" at the end of (3)(a); and added the last two sentences of (4).

CHAPTER 47.

COMMERCIAL FERTILIZERS

Sec.
75-47-11. Inspection fees.
75-47-13. Tonnage reports.

§ 75-47-11. Inspection fees.

(1) There shall be paid to the commissioner for all commercial fertilizers distributed in this state an inspection fee at the rate of Twenty-five Cents (25¢) per ton, provided that sales to manufacturers or exchanges between them are hereby exempted. Fees so collected shall be used for the payment of the costs, by act of the Legislature, of inspection, sampling and analysis, and other expenses necessary for the administration of this chapter. On individual packages of commercial fertilizer containing ten (10) pounds or less, there shall be paid in lieu of the annual registration fee of Ten Dollars ($10.00) per brand and grade and the Twenty-five Cents (25¢) per ton inspection fee, an annual registration fee and inspection fee of Fifty Dollars ($50.00) for each brand and grade sold or distributed. Where a person sells commercial fertilizer in packages of ten (10) pounds or less and in packages over ten (10) pounds, this annual registration and inspection fee of Fifty Dollars ($50.00) shall apply only to that portion sold in packages of ten (10) pounds or less, and that portion sold in packages over ten (10) pounds shall be subject to the same inspection fee of Twenty-five Cents (25¢) per ton as provided in this chapter.

(2) Every registrant or guarantor who distributes a commercial fertilizer in this state shall file with the commissioner, on forms furnished by the commissioner, an annual statement setting forth the number of net tons of each commercial fertilizer distributed in this state during the previous year. The report shall be due on or before the thirtieth day of the month following the close of the reporting year. Upon such statement the registrant shall pay the inspection fee at the rate stated in subsection (1) of this section.

If the tonnage report is not filed and the payment of inspection fee is not made within thirty (30) days after the end of the reporting year, a collection fee amounting to ten percent (10%) of the amount, but in no case less than Ten Dollars ($10.00), shall be assessed against the registrant, and the amount of fees due shall constitute a debt and become the basis of a judgment against the registrant.

(3) When more than one (1) person is involved in the distribution of a commercial fertilizer, the last person who has the fertilizer registered and who distributes to a nonregistrant, dealer or consumer, is responsible for reporting the tonnage and paying the inspection fee.

HISTORY: Codes, 1942, § 4450-06; Laws, 1970, ch. 263, § 6; Laws, 1973, ch. 411, § 1; Laws, 1987, ch. 523, § 6; Laws, 1997, ch. 448, § 2; Laws, 2017, ch. 320, § 1, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment, in (2), in the first paragraph, rewrote the first sentence, which read: "Every registrant or guarantor who distributes a commercial fertilizer in this state shall file with the commissioner, on forms furnished by the commissioner, a quarterly statement for the periods ending September 30, December 31, March 31 and June 30, setting forth the number of net tons of each commercial fertilizer distributed in this state during such quarter," substituted "the reporting year" for "each quarter" in the second sentence, and substituted "subsection (1)" for "paragraph (1)" in the last sentence, and substituted "the reporting year" for "the quarter" in the second paragraph; and inserted "(1)" following "more than one" in (3).

§ 75-47-13. Tonnage reports.

All fertilizer registrants transacting, distributing or selling commercial fertilizer to a nonregistrant shall file with the commissioner an annual report showing the county code of the consignee, each grade of commercial fertilizer, the amounts in tons, the Uniform Fertilizer Tonnage Reporting System (UFTRS) code, the form in which the fertilizer was distributed (bag, bulk or liquid) and the use (farm or nonfarm). This report of tonnage sold shall be reported by one (1) of the following methods:

(a) Submitting a summary report on forms furnished by the commissioner; or

(b) Submitting an electronic disk format or text file acceptable to the UFTRS. Each reporting method shall be as set forth in Section 75-47-11(2). No information furnished to the commissioner under this section shall be disclosed in such a way as to divulge the methods of operation of any registrant.

HISTORY: Codes, 1942, § 4450-07; Laws, 1970, ch. 263, § 7; Laws, 1997, ch. 448, § 3; Laws, 2017, ch. 320, § 2, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment substituted "an annual report" for "a summary quarterly report" in the introductory paragraph; and substituted "shall be as set forth" for "shall be due on the specified dates set forth" in the second sentence of (b).

CHAPTER 55.

GASOLINE AND PETROLEUM PRODUCTS

Sec.

75-55-5. Definitions; specifications; rules and regulations [Repealed effective July 1, 2023].
75-55-37. Penalty [Repealed effective July 1, 2023].

§ 75-55-5. Definitions; specifications; rules and regulations [Repealed effective July 1, 2023].

(1) The words, terms and phrases as used in this chapter shall have the following meanings, unless the context requires otherwise:

(a) The term "commissioner" means the Commissioner of the Missis-

sippi Department of Agriculture and Commerce, or his agents and employees.

(b) The term "State Chemist" means the Director of the Mississippi State Chemical Laboratory, or his agents and employees.

(c) The term "ASTM" means an international voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, and services, and the promotion of related knowledge.

(d) The term "person" shall include any individual, firm, copartnership, joint venture, association, corporation, estate, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(e) The term "illuminating oil" shall include coal oil, kerosene or other petroleum products used for illuminating purposes.

(f) The term "lubricating oil" means all petroleum-based oils or synthetic lubricants intended for use in the crankcase of an internal combustion engine, either spark ignition or diesel type. The purpose of the lubricating oil is to reduce friction between two (2) solid surfaces moving relative to one another.

(g) The term "gasoline pump" shall include pumps, meters and all measuring devices used for measuring gasoline and all oxygenated blended fuels; the term "diesel fuel pump" shall include pumps, meters and all measuring devices used for measuring diesel fuel; the term "kerosene pump" shall include pumps, meters and all measuring devices used for measuring kerosene; the term "liquefied compressed gas pump" shall include pumps, meters and all measuring devices used for measuring liquefied compressed gas.

(h) The term "gasoline" shall include (i) all products commonly or commercially known or sold as gasoline (excluding casing head and absorption or natural gasoline) regardless of their classification or uses; and (ii) a volatile mixture of liquid hydrocarbons, generally containing small amounts of additives, suitable for use as a fuel in spark ignition, internal combustion engines.

(i) The term "commercial gasoline" shall mean a liquid suitable for use as a fuel in spark ignition combustion engines, and shall be free of undissolved water, suspended matter and of any harmful ingredient or component and which, in addition, meets the following test requirements as set out in ASTM D4814, and it shall be the intent of this chapter that the state specifications may be kept current with ASTM D4814 as illustrated below:

(i) **Corrosion ASTM D130.** A clean copper strip shall not show more than extremely slight discoloration equivalent to ASTM Strip No. 1, when submerged in the gasoline for three (3) hours at one hundred twenty-two degrees (l22°) Fahrenheit, as determined by ASTM D130.

(ii) **Distillation range.** For each month the distillation range shall be that specified by the vapor pressure class requirement for that month.

Distillation temperature limits shall be consistent with the corresponding vapor pressure class during the months affected by federal or state regulation which restrict vapor pressure. If the vapor pressure limit is between two (2) classes, the distillation temperature limits of the least restrictive class shall be acceptable. The method of test shall be ASTM D86.

(iii) **Residue.** The residue, after evaporation, shall not exceed two percent (2%), as determined by ASTM D86.

(iv) **Gum test.** The gum shall not exceed five (5) milligrams per one hundred (100) milliliters, after the extraction of the residue with a-heptane, as determined by ASTM D381.

(v) **Sulphur.** The sulphur content shall not exceed ten one-hundredths percent (0.10%) for unleaded gasoline or fifteen one-hundredths percent (0.15%) for leaded gasoline, as determined by ASTM D2622 or D4045.

(vi) **Vapor pressure.** The vapor pressure during the months of July and August shall not exceed ten (10) pounds per square inch at one hundred degrees (100°) Fahrenheit, and during the months of November, December, January, February and March shall not exceed thirteen and one-half (13-1/2) pounds per square inch at one hundred degrees (100°) Fahrenheit.

The vapor pressure during the remaining months of the year shall not exceed eleven and five-tenths (11.5) pounds per square inch at one hundred degrees (100°) Fahrenheit. The method of determination shall be ASTM D4953. Federal or state regulation restricting vapor pressure to lower levels shall preempt these standards during the applicable months.

(vii) **Vapor liquid equilibrium.** A maximum value of twenty (20) for the vapor liquid equilibrium test during the months July and August shall be obtained at a temperature of one hundred thirty-three degrees (133°) Fahrenheit; for the months of November, December, January, February and March it shall be obtained at a temperature of one hundred sixteen degrees (116°) Fahrenheit; for the other months of the year it shall be obtained at one hundred twenty-four degrees (124°) Fahrenheit. The method of determination shall be ASTM D2533 or ASTM D4814, appendix X2.

(viii) **Lead specifications.** The unleaded gasoline shall contain less than five hundredths (0.05) gram of lead per gallon, and the leaded gasoline shall contain a minimum of five hundredths (0.05) gram of lead and less than four and two-tenths (4.2) grams of lead per gallon. The method of analysis should be ASTM D3237, (Atomic Absorption Spectrometry), ASTM D2599 (X-ray Spectrometry) or ASTM D2547 (Volumetric Chromate).

(ix) **Classification.**

1. "Leaded premium grade gasoline" shall have an (R + M)/2 octane antiknock index of at least ninety-three (93). The research octane number shall be at least ninety-six (96).

2. "Unleaded premium grade gasoline" shall have an (R + M)/2 octane antiknock index of at least ninety-one (91). The research octane number shall be at least ninety-four (94).

3. "Mid-grade unleaded gasoline" shall have an (R + M)/2 octane antiknock index of at least eighty-nine (89). The research octane number shall be at least ninety-two (92).

4. "Leaded regular grade gasoline" shall have an (R + M)/2 octane antiknock index of at least eighty-nine (89). The research octane number shall be at least ninety (90).

5. "Unleaded regular grade gasoline" shall have an (R + M)/2 octane antiknock index of at least eighty-seven (87). The research octane number shall be at least ninety (90), and the motor octane number shall be at least eighty-two (82).

6. "Third-grade gasoline" shall have an (R + M)/2 octane antiknock of not more than eighty-seven (87).

The methods of octane determination shall be ASTM D2699 for the research octane number (R) and ASTM D2700 for the motor octane number (M), or ASTM D2885 for both the research octane number and the motor octane number. The (R + M)/2 octane antiknock index shall be the average of the research and motor octane numbers. All retail pumps or delivery devices shall be labeled with the appropriate (R + M)/2 octane antiknock index in accordance with the Federal Trade Commission Octane Posting and Certification Regulation 306. No commercial gasoline shall be colored mahogany.

(j) The term "oxygenated fuel" means a liquid fuel which is a homogeneous blend of hydrocarbons and oxygenates. The term "oxygenate" means an oxygen containing ashless organic compound which may be used as a fuel supplement or additive and includes alcohols and ethers. "Gasoline-oxygenate blend" means a blend consisting primarily of gasoline and a substantial amount of one or more oxygenates. This definition includes, but is not limited to, the following designations:

(i) "Gasohol" meaning any motor fuel containing a nominal ten (10) volume percent anhydrous denatured alcohol and ninety (90) volume percent unleaded gasoline, regardless of other name, label or designation.

(ii) "Leaded gasohol" meaning any motor fuel containing a nominal ten (10) volume percent anhydrous, denatured ethanol and ninety (90) volume percent leaded gasoline, regardless of other name, label or designation.

(iii) Any gasoline-oxygenate blend which meets the United States Environmental Protection Agency's "substantially similar" rule, Section 211(f)(1) of the Clean Air Act, 42 USCS 7545(f)(1).

(iv) Any gasoline-oxygenate blend for which there is an existing Clean Air Act waiver issued by the United States Environmental Protection Agency.

(k) "Alcohol blended fuel" means gasohol or leaded gasohol.

(*l*) "Anhydrous, denatured ethyl alcohol (ethanol)" means normal two hundred (200) proof ethanol to which has been added a maximum of five (5)

volumes of approved denaturant(s) to one hundred (100) volumes of ethanol and containing not more than one and twenty-five hundredths percent (1.25%) water by weight as determined by ASTM E203.

(m) "Approved denaturant(s)" means materials used for denaturing ethyl alcohol for use as a motor fuel which have been approved by the United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, and both the State Chemist and the Commissioner of Agriculture and Commerce. Gasoline-oxygenate blends shall meet the specifications set forth in the most recent edition of the Annual Book of ASTM standards and supplements thereto, and revisions thereof, except where amended or modified by the Commissioner and State Chemist.

(n) The term "oil" as used in this chapter shall include diesel fuel, kerosene, fuel oil, distillate, gas oil, tractor fuel or any other product other than gasoline, as defined in this chapter, which is usable as fuel in an internal combustion engine, and any product which, on distillation in accordance with the method of test of the American Society for Testing and Materials shows not more than ten percent (10%) recovered when the thermometer shows two hundred sixty-one degrees (261°) Fahrenheit; and not more than ninety-five percent (95%) recovered when the thermometer shows four hundred sixty-five degrees (465°) Fahrenheit or more; provided that nothing in this paragraph shall be construed to include oils received or sold as lubricants when such oils cannot be used as a fuel in internal combustion engines.

(o) "Diesel fuel" is any petroleum product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without the presence of an electric spark.

Specifications: The fuel oils herein specified shall be hydrocarbon oils free from acids, grit and fibrous or other foreign material. Three (3) grades of such oils are specified and these shall conform to the detailed requirements in the current American Society for Testing and Materials Specifications for Diesel Fuel Oils (ASTM D975), except for the sulphur content of Grade 2-D. All tests shall be in accordance with the applicable American Society for Testing and Materials method as set forth in the current ASTM Designation D975. Diesel fuel requirements are listed below:

	Grade 1-D	Grade 2-D	Grade 4-D
Flash point, degrees F. D93	Min. 100	Min. 125	Min. 130
Water & sediment, % by volume, D1796	Max. 0.05	Max. 0.05	Max. 0.5
Carbon residue on 10% residium, % D524	Max. 0.15	Max. 0.35	_____
Ash, % by weight, D482	Max. 0.01	Max. 0.01	Max. 0.1
Distillation, 90% point, degrees F., D86	_____	Min. 540	_____
	Max. 550	Max. 640	_____
Viscosity @ 100 degrees F.			

kinematic-centistokes			
D445	Min. 1.3	Min. 2.0	Min. 5.5
or	Max. 2.4	Max. 4.1	Max. 24.0
Viscosity @ 100 degrees F.			
Saybolt Universal Sec.	_____	Min. 32.6	Min. 45
	Max. 34.4	Max. 40.1	Max. 125
Sulphur, % by weight, D129	Max. 0.5	Max. 1.0	Max. 2.0
Copper strip corrosion, D130	Max. No. 3	Max. No. 3	_____
Cetane number, D613 or D976	Min. 40	Min. 40	Min. 30

(p) The word "kerosene" shall include lamp oil, illuminating oil and coal oil which shall conform to the detailed requirements set forth in the current American Society for Testing and Materials Specification for Kerosene (ASTM D3699). All tests shall be in accordance with the applicable American Society for Testing and Material Methods as set forth in ASTM D3699. The detailed requirements are listed below:

(i) The oil shall be free of water and suspended matter.

(ii) The color shall not be darker than number plus sixteen (16) on the Saybolt scale, as determined by ASTM D156.

(iii) The flash point shall, by ASTM D56, not be lower than one hundred degrees (100°) Fahrenheit when determined in Tagliabue closed type tester, as determined by ASTM D56.

(iv) The sulphur content shall not exceed four one-hundredths percent (0.04%) for No. 1-K kerosene and thirty one-hundredths percent (0.30%) for No. 2-K kerosene. The method of determination shall be ASTM D1266. No. 1-K kerosene is a special low-sulphur grade kerosene suitable for use in nonflue-connected kerosene burner appliances and in wick-fed illuminating lamps. No. 2-K kerosene is suitable for use in flue-connected burner appliances and in wick-fed illuminating lamps.

(v) The distillation ten percent (10%) point shall not be higher than four hundred one degrees (401°) Fahrenheit, as determined by ASTM D86.

(vi) The distillation end point shall not be higher than five hundred seventy-two degrees (572°) Fahrenheit, as determined by ASTM D86.

(vii) The oil shall not show a cloud point at five degrees (5°) Fahrenheit, as determined by ASTM D2500.

(viii) The oil shall burn freely and steadily for sixteen (16) hours, as determined by ASTM D187.

(ix) The gravity shall not be less than degrees API 41, as determined by ASTM D1298.

(x) The corrosion test results shall be No. 1 Maximum in a three-hour at two hundred twelve degrees (212°) Fahrenheit test, as determined by ASTM D130.

(q) Racing gasoline means any gasoline which is sold for racing pur-

poses. Racing gasoline may be sold from retail dispensing equipment under the following conditions:

(i) The product brand name and octane number shall be registered with the Commissioner of Agriculture and Commerce and the State Chemist.

(ii) The manufacturer shall forward a list of marketers selling these product(s) and the product(s) being sold by each marketer.

(iii) Marketers shall register their retail outlets by location and provide a list of the product(s) sold for each retail outlet.

(iv) The dispensing equipment shall contain a conspicuous sign stating that the fuel is racing gasoline. The dispensing equipment shall not contain any kind of representation indicating that the product is suitable for vehicles other than for racing.

(v) The dispensing equipment shall be dedicated to and isolated from any other motor fuel dispensing equipment in a manner that a vehicle cannot access both the commercial gasoline and the racing gasoline at the same time.

(vi) Any violation shall result in revocation of the approval to market and/or confiscation of the product.

(vii) The Commissioner of Agriculture and Commerce (the "commissioner") and the State Chemist are hereby given authority to change the specifications set forth in this section to comply with the currently recommended ASTM or federally required specifications.

(2) This section shall stand repealed on July 1, 2023.

HISTORY: Codes, 1942, § 5083; Laws, 1938, ch. 145; Laws, 1942, ch. 245; Laws, 1946, ch. 263, § 3; Laws, 1948, ch. 316, § 1; Laws, 1950, ch. 477, § 1; Laws, 1952, ch. 345, § 1; Laws, 1956, ch. 394; Laws, 1958, ch. 187; Laws, 1962, ch. 195; Laws, 1966, ch. 624, § 1; Laws, 1969, Ex Sess, ch. 24, § 1; Laws, 1978, ch. 357, § 1; Laws, 1980, ch. 417, § 1; Laws, 1984, ch. 452, § 2; Laws, 1986, ch. 395, § 7; Laws, 1988, ch. 482, § 2; Laws, 1990, ch. 450, § 2; Laws, 2008, ch. 486, § 1; Laws, 2010, ch. 397, § 1; Laws, 2013, ch. 372, § 1; Laws, 2016, ch. 402, § 1, eff from and after July 1, 2016; Laws, 2020, ch. 321, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment extended the date of the repealer for the section by substituting "July 1, 2023" for "July 1, 2020" in (2).

§ 75-55-37. Penalty [Repealed effective July 1, 2023].

(1) The commissioner or his duly appointed representatives shall have the right to request an inspection of any pump, truck, or other equipment, and if upon such inspection any such pump, truck, or other equipment is found to be inaccurate to the extent that a test thereof shows a deficiency of more than twenty-five (25) cubic inches on a five (5) gallon measurement, or if the right to inspect any such pump, truck, or other equipment is refused or denied the commissioner, or his duly authorized representatives, he or they shall have the right to immediately close and lock said pump and other equipment or to seal same with the commissioner's seal. If such pump, truck, or other equipment is

found to be inaccurate but the deficiency is twenty-five (25) cubic inches or less on a five (5) gallon measurement, then the commissioner or his representative shall give the owner or operator thereof forty-eight (48) hours within which to correct such inaccuracy and if such person fails or refuses to correct same within said period then the commissioner or his representative shall have the right to lock and seal such pump or other equipment in the same manner as provided above.

It shall be prima facie presumed upon any refusal to allow the right to inspect that the pump, truck, or other equipment sought to be inspected is inaccurate to the extent set forth above, or is operating in violation of this chapter. When any such pump or other equipment is locked or sealed, it may not be unlocked or the seal thereon broken except in the presence of a mechanic or other person called for the purpose of repairing the inaccuracy in the machinery of such pump or other equipment, and such inaccuracy shall be immediately thereafter repaired, and the pump or other equipment properly regulated. The commissioner may, in his discretion, require an affidavit from the mechanic repairing such pump or other equipment, or any other proof which he may deem advisable to the effect that said pump was unlocked or the seal thereon broken in the presence of such mechanic, and that the inaccuracies therein were thereupon completely repaired or regulated.

When a state or factory seal is broken on the measuring adjustment device on a retail pump, it shall be the duty of the station operator to notify the commissioner by United States mail, within twenty-four (24) hours, after the breaking of said seal. After the commissioner has received written notice as herein provided and he or his agent has resealed the measuring adjustment device on the pump or pumps at this station, it shall be unlawful for the owner or operator of the station or any of his employees to break a state or factory seal on the measuring adjustment device on any pump at the station during the ensuing ninety (90) days without the prior approval of the commissioner or his agent.

The State of Mississippi shall have a lien on all pumps, trucks, and other equipment used by any distributor, or other person, in the operation of his business for any tax or penalty due the State of Mississippi because of any violation of this chapter. Such lien shall be paramount to any and all private liens and all the provisions set out in Chapter 7, Title 85, Mississippi Code of 1972, shall be applicable herein for the purpose of securing the enforcement of said lien, and particularly the right to secure the issuance of a writ of summons and seizure and proceedings had and done after the issuance of said writ shall be applicable. Provided, however, that the commissioner shall not be required to give any bond in any such case.

Any person or officer, agent or employee thereof who shall violate any provision of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding One Hundred Dollars ($100.00) for the first offense and not less than One Hundred Dollars ($100.00) nor more than Two Hundred Dollars ($200.00) for each subsequent

offense or imprisonment in the county jail for a period not to exceed ninety (90) days or both.

(2) If a person who, by himself, by his agent, or as the servant or agent of another person commits a violation of this chapter, the commissioner or his designee may impose any, all or a combination of the following penalties:

(a) A stop sale order for any engine fuel, nonengine fuel, automotive lubricant or any other petroleum product not in compliance with this chapter. A remand of the stop sale order may be issued if the engine fuel, nonengine fuel, automotive lubricant or petroleum product is brought into full compliance with this chapter. The stop sale order may be appealed to the commissioner or his designee within twenty (20) days from the receipt of the order.

(b) A warning letter for violations of this chapter.

(c) A civil penalty of not more than Three Thousand Dollars ($3,000.00) per violation. A person may request an administrative hearing within thirty (30) days of receipt of the notice of the penalty. The commissioner or his designee shall conduct a hearing after giving reasonable notice to the person. The decision may be appealed to the Circuit Court of the First Judicial District of Hinds County.

(3) If the person has exhausted his administrative appeals, he shall pay the civil penalty within thirty (30) days after the effective date of the final decision. If the person fails to pay the penalty, the commissioner may bring a civil action in any court of competent jurisdiction to recover the penalty.

(4) The commissioner is authorized to suspend, revoke and/or permanently deny a registration under the Petroleum Products Inspection Law of Mississippi to any person, firm, corporation or other organization determined to be guilty of two (2) or more violations per location, per year, of the Petroleum Products Inspection Law of Mississippi and the rules and regulations in force pursuant thereto.

(5) In lieu of, or in addition to, the penalties provided above, the commissioner and the State Chemist shall have the power to institute and maintain in the name of the state any and all proceedings necessary or appropriate to enforce the provisions of the Petroleum Products Inspection Law of Mississippi and the rules and regulations in force pursuant thereto, in the appropriate circuit, chancery, county or justice court in which venue may lie. The commissioner and the State Chemist may obtain mandatory or prohibitory injunctive relief, whether temporary or permanent, and it shall not be necessary for the state to post a bond or prove that no adequate remedy is available at law.

(6) All penalties assessed by the commissioner under this section shall be deposited in the State General Fund.

(7) This section shall stand repealed on July 1, 2023.

HISTORY: Codes, 1942, § 5100; Laws, 1938, ch. 145; Laws, 1946, ch. 263, § 20; Laws, 1948, ch. 316, § 3; Laws, 1950, ch. 477, § 4; Laws, 1958, ch. 184; Laws, 1969, Ex Sess, ch. 24, § 11; Laws, 1990, ch. 450, § 14; Laws, 1993, ch. 459, § 1; Laws, 2010, ch. 397, § 2; Laws, 2013, ch. 372, § 2; Laws, 2016, ch. 402, § 2, eff from and after July 1, 2016; Laws, 2020, ch. 321, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment extended the date of the repealer for the section by substituting "July 1, 2023" for "July 1, 2020" in (7).

CHAPTER 57.

LIQUEFIED PETROLEUM GASES

State Liquefied Compressed Gas Board. 75-57-101

STATE LIQUEFIED COMPRESSED GAS BOARD

Sec.

75-57-119. Propane education and research program; establishment of fund; imposition of assessment; refunds; liability; promulgation of rules and regulations; use of funds collected; implementation upon affirmative election; notification requirements.

§ 75-57-119. Propane education and research program; establishment of fund; imposition of assessment; refunds; liability; promulgation of rules and regulations; use of funds collected; implementation upon affirmative election; notification requirements.

(1) There is established a propane education and research program to be administered by the Department of Insurance through the State Liquefied Compressed Gas Board, created in Section 75-57-101, Mississippi Code of 1972, for the purpose of promoting the growth and development of the propane industry in Mississippi.

(2) There is created in the State Treasury a special fund to be designated as the "Mississippi Propane Education and Research Fund."

(3)(a) There is imposed and levied an assessment of One-tenth Cent ($^1/_{10}$¢) per gallon on compressed gas except for compressed natural gas or liquefied natural gas. The assessment may be increased by not more than One-tenth Cent ($^1/_{10}$¢) per gallon per year and the total assessment shall not exceed One-half Cent (½¢) per gallon.

(b) Section 27-59-11(1), Mississippi Code of 1972. On or before the fifteenth day of each month the funds collected by the State Tax Commission during the previous month, less three and one-half percent (3-½%) of the gross amount collected, shall be deposited into the special fund created in subsection (2) of this section. The State Tax Commission may retain three and one-half percent (3-½%) of the funds collected under this section as administrative fees. The assessment shall accrue at the same time and in the same manner as the tax levied on compressed gas under the provisions of . On or before the fifteenth day of each month the funds collected by the State Tax Commission during the previous month, less three and one-half percent (3-½%) of the gross amount collected, shall be deposited into the special fund created in subsection (2) of this section. The State Tax Commission may

retain three and one-half percent (3-½%) of the funds collected under this section as administrative fees.

(c) Disbursements from the special fund created in subsection (2) of this section shall be made upon warrants issued by the State Fiscal Officer upon requisitions signed by the Commissioner of Insurance, or his designee, in the manner provided by law. Any interest earned by investing the proceeds in such special fund shall be credited to such special fund and shall not be deposited in the State General Fund. The State Fiscal Officer may issue warrants for the payment of monies from the special fund, upon requisition by the Commissioner of Insurance, or his designee, for refunds to dealers as provided in subsection (4) of this section.

(4) Any propane dealer may request and receive a refund of the amount of assessment remitted from the sale of propane if he makes a written application with the Department of Insurance by the end of each quarter in which the sales were made, supported by bona fide copies of tax reports. The application forms shall be prepared by the Department of Insurance and shall be available to all retailers. All such applications shall be processed and refunds paid by the Department of Insurance within sixty (60) days after the funds have been received by the department.

(5) At the end of each quarter, the Department of Insurance shall make available to the State Liquefied Compressed Gas Board all unencumbered funds collected under the provisions of this section. The Department of Insurance may retain an amount not to exceed three and one-half percent (3-½%) of the funds collected under the provisions of this section as administrative fees.

(6)(a) Any person liable for the assessment shall be subject to the same requirements and penalties set forth for distributors under the provisions of Section 27-59-1 et seq., Mississippi Code of 1972.

(b) The State Tax Commission is hereby authorized and empowered to promulgate all rules and regulations necessary for the collection of the assessment.

(7) The State Liquefied Compressed Gas Board shall establish, with the approval of the Commissioner of Insurance, rules and regulations necessary to carry out the provisions of this section.

(8) The State Liquefied Compressed Gas Board may expend the proceeds collected under this section only on research and development of more cost effective uses of propane and on educational programs, safety programs and market development of propane.

(9) This section shall not be implemented until such time as the State Liquefied Compressed Gas Board conducts an election by all licensed propane dealers in this state. Each license holder shall have one (1) vote in such election. A ballot shall be sent to each license holder by certified mail. A majority of those ballots returned within thirty (30) days after the ballots are received by the propane dealers must be in the affirmative before this section is effective. An additional election may be held by the State Liquefied Compressed Gas Board at such time as approved by the Commissioner of Insurance.

(10) The State Liquefied Compressed Gas Board shall notify the State Tax Commission in writing of the imposition of the assessment and of any increase of the assessment. The imposition of the assessment and any increase of the assessment shall become effective on the first day of the second month succeeding the month in which the notice to impose or increase the assessment was given.

(11) The State Liquefied Compressed Gas Board shall notify the State Tax Commission in writing of the abatement or reduction of the assessment. The abatement or reduction of the assessment shall become effective on the last day of the month succeeding the month in which such notice was given.

(12) From and after July 1, 2017, none of the monies deposited in the Mississippi Propane Education and Research Fund may be used to reimburse or otherwise defray any costs that the Department of Insurance may incur in administering the fund.

HISTORY: Laws, 1996, ch. 429, § 1; Laws, 2017, 1st Ex Sess, ch. 7, § 35, eff from and after passage (approved June 23, 2017).

Amendment Notes — The 2017 amendment, effective June 23, 2017, added (12).

CHAPTER 60.

PROPRIETARY SCHOOLS AND COLLEGES

Sec.

75-60-3. Definitions.
75-60-4. Commission on Proprietary School and College Registration; staffing; purpose of commission; levying and collection of fees.
75-60-17. Surety bond or deposit for certificate of registration.
75-60-23. Agent permit required.
75-60-25. Issuance of agent permit.

§ 75-60-3. Definitions.

As used in this chapter:

(a) "Course of instruction" means the offering of instruction to individuals for a charge, fee or contribution of any kind, to a person or persons for the purpose of training or preparing such person(s) for a field of endeavor in a business, trade, technical or industrial occupation.

(b) "Program of study" means a series of individual courses in an area of specialization for which a diploma, degree, certificate or other written evidence of proficiency or achievement is offered.

(c) "Agent" means any person employed by an institution licensed by the commission, regardless of job title, job description, full-time or part-time employment status, who either directly or indirectly influences the decision of any prospective student to enroll for a fee in a course of instruction.

(d) "Person" means an individual, corporation, partnership, association or any other type of organization.

(e) "Board" means the Mississippi Community College Board established in Section 37-4-3 et seq., Mississippi Code of 1972.

(f) "Commission" means the Commission on Proprietary School and College Registration established under this chapter.

(g) "Correspondence education" means a formal educational process under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor. Interaction between the instructor and the student is limited, is not regular and substantive, and is primarily initiated by the student. Correspondence courses are typically self-paced. Correspondence education shall not be construed to mean or refer to "distance education" as defined in paragraph (h) of this section.

(h) "Distance education" means a formal educational process in which the majority of the instruction in a course occurs when students and instructors are not in the same place. Instruction may be synchronous or asynchronous. Distance education uses the technologies set forth in this paragraph to deliver instructions to students and to support regular, substantive interaction between students and instructors. A distance education course instructor may use any of the following technologies: the Internet; one-way and two-way transmissions through open broadcast, closed-circuit, cable, microwave, broadband lines, fiber optics, satellite or wireless communications devices; audio conferencing; or video cassettes, DVDs and CD-ROMs if used as part of the distance learning course or program.

(i) "General education course" means a unit of learning that is nontechnical in nature and is a fundamental part of a program. The content is drawn from oral and written communications, social studies, mathematics, natural sciences and the humanities.

(j) "Nontechnical course" means a unit of learning that is nontechnical in nature and includes general education courses, basic/college life skills and other related courses.

(k) "Occupational degree" means a credential awarded by a school upon successful completion of an associate degree program and designated as "applied" or "occupational" in the credential title. This program shall contain a minimum of sixty percent (60%) technical course credits/clock hours.

(*l*) "Institution" means a proprietary school, career college, school person or other organization that offers programs that require registration in accordance with Section 75-60-5.

(m) "Technical course" means a unit of learning that yields skills, knowledge and understanding essential to the specific occupation for which the program is designed.

HISTORY: Codes, 1942, § 6688-02; Laws, 1972, ch. 507, § 2; Laws, 1974, ch. 441, § 2; Laws, 1992, ch. 349, § 2; Laws, 1993, ch. 446, § 1; Laws, 2013, ch. 333, § 1, eff from and after July 1, 2013; Laws, 2019, ch. 384, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment, in (g), divided the former second

sentence into the present second and third sentences by substituting "initiated by the student. Correspondence courses" for "initiated by the student; courses," and added the last sentence; in (h), deleted "(interaction between students and instructors and among students)" following "majority of the instruction" in the first sentence, added the second sentence; and inserted "instructor" and "any of the following technologies" in the last sentence; and added "and designated as 'applied' or 'occupational' in the credential title" at the end of the first sentence of (k).

§ 75-60-4. Commission on Proprietary School and College Registration; staffing; purpose of commission; levying and collection of fees.

(1) The Mississippi Community College Board shall appoint a "Commission on Proprietary School and College Registration" to be composed of five (5) qualified members, one (1) appointed from each of the five (5) Mississippi congressional districts existing on January 1, 1992. The membership of said commission shall be composed of persons who have held a teaching, managerial or other similar position with any public, private, trade, technical or other school; provided, however, that one (1) member of the commission shall be actively engaged in, or retired from, teaching, managerial or other similar position with a privately owned trade, technical or other school. The membership of said commission shall be appointed by the board within ninety (90) days of the passage of this chapter. In making the first appointments, two (2) members shall be appointed for three (3) years, two (2) members for four (4) years, and one (1) member for five (5) years. Thereafter, all members shall be appointed for a term of five (5) years. If one (1) of the members appointed by the board resigns or is otherwise unable to serve, a new member shall be appointed by the commission to fill the unexpired term. All five (5) members of the commission have full voting rights. The members shall not be paid for their services, but may be compensated for the expenses necessarily incurred in the attendance at meetings or in performing other services for the commission at a rate prescribed under Section 25-3-69, Mississippi Code of 1972, plus actual expenses and mileage as provided by Section 25-3-41, Mississippi Code of 1972. Members of the commission shall annually elect a chairman from among its members who is not actively engaged with a privately owned trade or technical school.

(2) The Mississippi Community College Board shall appoint such staff as may be required for the performance of the commission's duties and provide necessary facilities.

(3) The Mississippi Community College Board shall levy fees authorized in this chapter only in such amounts as may be required for the performance of the commission's duties.

(4) In addition to the fees authorized in this chapter, the Mississippi Community College Board is authorized to levy and collect fees from proprietary schools and colleges to recover the cost of audits, investigations and hearings relating to such institutions.

(5) It shall be the purpose of the Commission on Proprietary School and College Registration to establish and implement the registration program as

provided in this chapter. All controversies involving the registration of such schools shall be initially heard by a duly authorized hearing officer of the commission before whom a complete record shall be made. After the conclusion of the hearing, the duly authorized hearing officer of the commission shall make a recommendation to the commission as to the resolution of the controversies, and the commission, after considering the transcribed record and the recommendation of its hearing officer, shall make its decision which becomes final unless the school or college or other person involved shall appeal to the Mississippi Community College Board, which appeal shall be on the record previously made before the commission's hearing officer except as may be provided by rules and regulations adopted by the Mississippi Community College Board. All appeals from the Mississippi Community College Board shall be on the record and shall be filed in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

HISTORY: Laws, 1992, ch. 349, § 3; Laws, 1993, ch. 446, § 2; Laws, 2011, ch. 478, § 1; Laws, 2013, ch. 333, § 2, eff from and after July 1, 2013; Laws, 2018, ch. 353, § 2, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment deleted "only" preceding "fees authorized" in (3); and in (4), deleted "(a)" preceding "to recover the cost" and deleted "and (b) to recover the cost of activities conducted under Section 73-15-25 relating to the accreditation of practical nursing programs."

§ 75-60-17. Surety bond or deposit for certificate of registration.

The application for a certificate of registration shall be accompanied by a surety bond with conditions and in a form prescribed by the Commission on Proprietary School and College Registration with at least one (1) corporate bonding company approved by the Department of Insurance as surety thereon. The bond shall provide for the indemnification of any person suffering loss as the result of any false certification, school closure, any fraud or misrepresentation used in behalf of the principal in procuring such person's enrollment in a course of instruction, including repayment of tuition paid in advance by any student. The bond shall provide for the reimbursement of the commission of any actual administrative costs associated with an institution ceasing operations. The term of the bond shall be continuous, but it shall be subject to cancellation by the surety in the manner described in this section. The bond shall provide blanket coverage for the acts of all persons engaged as agents of the school without naming them and without regard to the time they are engaged during the term of the bond.

First priority for the use of surety bonds shall be given to students impacted by the closing of the proprietary school.

The surety may terminate the bond upon giving a sixty-day written notice to the principal and to the Commission on Proprietary School and College Registration, but the liability of the surety for acts of the principal and its agents shall continue during the sixty (60) days of cancellation notice. The

notice does not absolve the surety from liability which accrues before the cancellation becomes final but which is discovered after that date and which may have arisen at any time during the term of the bond. Unless the bond is replaced by that of another surety before the expiration of the sixty (60) days' notice of cancellation, the certificate of registration shall be suspended. Any person subject to this chapter required to file a bond with an application for a certificate of registration may file, in lieu thereof, cash, a certificate of deposit, or government bonds of the same dollar value as the prescribed bond. Said deposit is subject to the same terms and conditions as are provided for in the surety bond required herein. Any interest or earnings on such deposits are payable to the depositor.

HISTORY: Codes, 1942, § 6688-09; Laws, 1972, ch. 507, § 9; Laws, 1986, ch. 432, § 10; Laws, 1992, ch. 349, § 10; Laws, 1998, ch. 334, § 3; Laws, 2011, ch. 478, § 3, eff from and after July 1, 2011; Laws, 2019, ch. 384, § 2, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added the third sentence of the first paragraph; and added the second paragraph.

§ 75-60-23. Agent permit required.

No person employed by an institution licensed by the commission, regardless of job title, job description, full-time or part-time employment status, shall directly or indirectly influence the decision of any prospective student to enroll for a fee in a course of instruction without first securing a permit as an agent from the Commission on Proprietary School and College Registration. If the person represents more than one (1) institution or campus, a separate permit shall be obtained for each institution or campus represented. Agent permits shall only be issued to agents of institutions that hold a certificate of registration issued by the commission.

HISTORY: Codes, 1942, § 6688-11; Laws, 1972, ch. 507, § 11; Laws, 1986, ch. 432, § 13; Laws, 1992, ch. 349, § 14; Laws, 1993, ch. 446, § 7; Laws, 2011, ch. 478, § 5; Laws, 2013, ch. 333, § 6, eff from and after July 1, 2013; Laws, 2019, ch. 384, § 3, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment inserted "or campus" twice in the next-to-last sentence.

§ 75-60-25. Issuance of agent permit.

The application for an agent permit shall be made on forms to be furnished by the Commission on Proprietary School and College Registration. Any agent permit applied for shall be granted or denied within sixty (60) days of the receipt of the application therefor by the commission. If the commission has not completed its determination with respect to the issuance of an agent permit within such sixty-day period, it shall issue a temporary agent permit to the applicant, which permit is sufficient to meet the requirements of Section 75-60-23 until such time as such determination is made. Upon approval for an

agent permit, the commission shall issue a permit to the person, giving his or her name, agent permit number and the name and campus location of his or her employing school, and certifying that the person whose name appears on the permit is an authorized agent of the school. An agent permit is valid for one (1) year from the date on which it was issued.

HISTORY: Codes, 1942, §§ 6688-11, 6688-12; Laws, 1972, ch. 507, §§ 11, 12; Laws, 1986, ch. 432, § 14; Laws, 1992, ch. 349, § 15; Laws, 1993, ch. 446, § 8; Laws, 2011, ch. 478, § 6; Laws, 2013, ch. 333, § 7, eff from and after July 1, 2013; Laws, 2019, ch. 384, § 4, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment, in the next-to-last sentence, substituted "permit" for "pocket card" and "card," and inserted "or her" twice.

CHAPTER 63.

SALES OF CEMETERY MERCHANDISE AND FUNERAL SERVICES

Article 3. Preneed Cemetery and Funeral Registration. 75-63-51

ARTICLE 3.

PRENEED CEMETERY AND FUNERAL REGISTRATION.

Sec.
75-63-81. Preneed Contracts Loss Recovery Fund; creation, purpose, administration, loss recovery fee, reimbursement for claims; prohibition against use of existence of fund for sales, solicitation, or inducement to purchase contract; Preneed Contracts Loss Recovery Association; directors, appointment, terms; appeals.

§ 75-63-81. Preneed Contracts Loss Recovery Fund; creation, purpose, administration, loss recovery fee, reimbursement for claims; prohibition against use of existence of fund for sales, solicitation, or inducement to purchase contract; Preneed Contracts Loss Recovery Association; directors, appointment, terms; appeals.

(1) There is established a Preneed Contracts Loss Recovery Fund, hereinafter referred to as the "fund," to be administered by directors of the Preneed Contracts Loss Recovery Association, hereinafter referred to as the "association." Directors are to be appointed by the Secretary of State. The purpose of the fund is to reimburse the estates, or in the absence of an estate filing, the purchaser or applicant with payment jointly to the funeral home providing services or merchandise, or both, of beneficiaries of preneed funeral contracts who have suffered financial loss as a result of the misfeasance, fraud, default, failure or insolvency of a registered Mississippi preneed provider.

(2) The fund shall be funded from a charge not to exceed Ten Dollars ($10.00) to be added to the cost of every preneed contract sold from and after July 1, 2009; however, if the preneed contract is funded solely with insurance that is protected by the Mississippi Life and Health Insurance Guaranty Association, then that fee shall not be charged. The association may reduce, suspend or resume collection of the fee at any time and for any period to ensure that a sufficient amount is available to meet anticipated disbursements and to maintain an adequate reserve consistent with actuarial guidance.

The per-contract fees shall be remitted quarterly to the association for each quarter of the calendar year with a quarterly fee form as prescribed by the Secretary of State. The per-contract fee is not subject to the trusting requirements of Section 75-63-59. The fees shall be remitted to the association no later than fifteen (15) days after each quarter. Absent the Secretary of State's approval of an extension for good cause shown, preneed providers failing to timely report and remit the per-contract fee to the association may be subject to a penalty of One Hundred Dollars ($100.00) per day for each day of delinquency, payable to the fund.

(3) All sums received by the association shall be held in a separate account maintained by the State Treasurer to be used solely as provided in this article. Warrants to the fund may only be issued by the Department of Finance and Administration upon request by a majority vote of the directors of the Preneed Contracts Loss Recovery Association. All interest or other income earned on the fund shall be retained by the fund.

(4) Reimbursements from the fund must not exceed the total payment made for preneed funeral services or merchandise, cemetery services or merchandise, or both. No current insurance benefits or future graduated insurance benefits may be reimbursed, including any current or future graduated insurance benefits in any insurance company insolvency guaranty fund association. Upon the death of the beneficiary and the applicant's compliance with all applicable rules of the association, reimbursement from the fund may be made to the estate of the beneficiary, the purchaser or applicant with payment jointly to the funeral home or cemetery providing services or merchandise, or both, only to the extent to which losses are not bonded or otherwise covered. If the association makes payments from the fund under this section, the association is subrogated in the reimbursed amount and may bring an action against any person or entity, including a preneed provider. The association may enforce claims it may have for restitution or otherwise and may employ and compensate from the fund consultants, legal counsel, accountants and other persons it considers appropriate to assure compliance with this section.

(5) The association shall investigate all applications made and may reject or allow claims, in whole or in part. Payment may be made only to the extent that monies are available in the fund, and payments may be prorated among claimants. Reimbursements for completed claims must be processed subject to availability of monies in the fund. The association has complete discretion to determine the order and manner of payment of approved applications. The

association may approve one (1) application, in whole or in part, that includes more than one (1) reparation claim for the benefit of purchasers of prepaid contracts of an insolvent registrant as part of a plan to arrange for another registrant to assume the obligations of the licensee being liquidated if the association finds that the plan is reasonable and is in the best interests of the contract beneficiaries. All payments are a matter of privilege and not a right, and no person has a right in the fund as a third-party beneficiary or otherwise.

(6) The association shall develop a form of application for reimbursement.

(7) This fund and all interest earned may be used only as prescribed in this section and may not be used for any other purposes to the extent losses are not bonded, insured, or otherwise covered, protected or reimbursed. Further, all monies deposited into the fund shall not be subject to any deduction, tax, judgment lien, levy, or any other type of assessment except as may be provided in this article. The association may expend monies from the fund to:

(a) Make reimbursements on approved applications;

(b) Purchase insurance to cover losses and association liability as considered appropriate by the directors and not inconsistent with the purpose of the fund;

(c) Invest portions of the fund as are not currently needed to reimburse losses and maintain adequate reserves, as are permitted to be made by fiduciaries under state law;

(d) Pay the expenses of the association for administering the fund, including employment of legal counsel, accountants, consultants and other persons the board considers necessary to assure compliance with this section;

(e) Effective upon June 23, 2017, no monies deposited to the fund may be used to reimburse, or otherwise defray any costs that the Office of the Secretary of State may incur in administering this fund, or in support of the association.

(8) No person may make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter, poster or over any radio station or television station, or in any other way, any advertisement, announcement, or statement that uses the existence of the fund for the purpose of sales, solicitation or inducement to purchase any form of preneed contract covered under this article.

(9) The Secretary of State may establish rules and regulations necessary to implement the purposes of this section including, but not limited to, rules governing the association's operations, claim procedures, determination of solvency or insolvency of a preneed provider, claimant eligibility and determination of appropriate loss payee.

(10) No purchaser or representative of a purchaser is provided in this section with any administrative right or legal or equitable right to any funds collected for this association to satisfy any judgment or economic loss of the purchaser from a prepaid funeral or cemetery organization except for the

purposes of this section. This fund is established for the discretionary relief of purchasers and their representatives of prepaid funeral or cemetery contracts from insolvent prepaid funeral or cemetery organizations or prepaid funeral businesses with severe trust fund account shortages as determined by the directors. Coverage is limited to the claimant's actual contract payments made. There shall be no fund coverage for additional economic damages, attorney's fees, recovery costs, interest, other equitable relief or noneconomic damages.

Further, no claimant shall be eligible for compensation from the fund unless the contract purchaser for whom a claim is asserted paid to the preneed provider the loss recovery fee required by subsection (2) of this section. The fund shall have no liability for preneed contracts sold or claims that occurred or accrued before July 1, 2009.

(11) There shall be no liability on the part of and no cause of action of any nature shall arise against any director of the association, the Secretary of State, his representatives, agents or employees for any act or omission by them in the performance of their powers and duties under this article, or in its administration, dispensation, handling or collection of funds for the program.

(12) Directors of the association shall be appointed by the Secretary of State and shall consist of no fewer than five (5), one (1) from each of the Mississippi Supreme Court Districts and two (2) from the state at large. In making director appointments the Secretary of State shall consider, among other things, whether all association members are fairly represented. At least three (3) of the directors must possess five (5) years' or more experience in the preneed funeral service and merchandise business as an owner or manager. All directors shall be appointed for staggered six-year terms, with the exception of the initial terms of service for the original five (5) directors. The Secretary of State may appoint any director to a successive six-year term. The initial term of service for all directors shall begin on October 1, 2009, with the initial term of two (2) directors to be determined by the Secretary of State at appointment expiring on September 30, 2011, and two (2) directors to be determined by the Secretary of State at appointment expiring on September 30, 2013. The initial term for the remaining director to be determined by the Secretary of State at appointment shall expire on September 30, 2015.

(13) [Deleted]

(14) The association and its directors shall assist the Secretary of State and be subject to the applicable provisions of the laws of this state. The association shall be subject to examination and regulation by the Secretary of State. The association by its directors shall prepare and submit to the Secretary of State each year, not later than March 1 of each year, a financial report in a form approved by the Secretary of State and a report of activities during the preceding calendar year.

(15) Appeal rights for claim decisions issued by the association directors exist in the chancery court in this state in which an estate has been open for probate by the representative of the claimant; the chancery court in the county in which the preneed contract was purchased; or the chancery court in this state of the claimant's or decedent's home county. A notice of appeal must be

filed within thirty (30) days of the association's written order denying the claim, in whole or in part, and appeal to the chancery court is limited to a review of the record made before the association's directors on a substantial evidence evidentiary standard.

HISTORY: Laws, 2009, ch. 549, § 14; Laws, 2017, 1st Ex Sess, ch. 7, § 36, eff from and after passage (approved June 23, 2017).

Amendment Notes — The 2017 amendment, effective June 23, 2017, added (7)(e); substituted "purposes of this section" for "pursposes of the section" in (9); deleted former (13), which read: "Compensation for a director may be paid from the fund, and compensation is limited to Fifty Dollars ($50.00) per day only for each travel day and meeting day designated by the Secretary of State in addition to a per diem amount designed to compensate directors for reasonable meal allowances, travel and lodging expenses, if needed, to attend meetings of the association directors"; and made minor stylistic changes.

CHAPTER 67.

LOANS

Article 9.	Title Pledge Act.	75-67-401
Article 11.	Mississippi Check Cashers Act.	75-67-501
Article 13.	Mississippi Credit Availability Act.	75-67-601

ARTICLE 9.

TITLE PLEDGE ACT.

§ 75-67-403. Definitions [Repealed effective July 1, 2022].

HISTORY: Laws, 1997, ch. 610, § 3; Laws, 2000, ch. 621, § 20; Laws, 2016, ch. 500, § 20, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 20, eff from and after July 1, 2018.

Editor's Notes — For repeal of this section, see § 75-67-639.

This section was reenacted without change by Laws of 2018, ch. 404, § 20, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2018 amendment reenacted the section without change.

ARTICLE 11.

MISSISSIPPI CHECK CASHERS ACT.

§ 75-67-505. Licensing requirements [Repealed effective July 1, 2022].

HISTORY: Laws, 1998, ch. 587, § 3; reenacted and amended, Laws, 1999, ch. 481, § 3; Laws, 2001, ch. 534, § 1; reenacted without change, Laws, 2003, ch. 341, § 3; reenacted and amended, Laws, 2007, ch. 488, § 3; reenacted and

amended, Laws, 2011, ch. 309, § 3; reenacted without change, Laws, 2013, ch. 408, § 3; Laws, 2016, ch. 500, § 21, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 21, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 21, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

ARTICLE 13.

MISSISSIPPI CREDIT AVAILABILITY ACT.

Sec.

75-67-639. Repeal of Sections 75-67-601 through 75-67-639, and Sections 75-67-403 and 75-67-505 [Repealed effective July 1, 2022].

§ 75-67-601. Short title [Repealed effective July 1, 2022].

HISTORY: Laws, 2016, ch. 500, § 1, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 1, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 1, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-67-603. Definitions [Repealed effective July 1, 2022].

HISTORY: Laws, 2016, ch. 500, § 2, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 2, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 2, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-67-605. Licensing requirements [Repealed effective July 1, 2022].

HISTORY: Laws, 2016, ch. 500, § 3, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 3, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 3, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this

supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-67-607. Exemptions [Repealed effective July 1, 2022].

HISTORY: Laws, 2016, ch. 500, § 4, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 4, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 4, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-67-609. Applicant eligibility requirements [Repealed effective July 1, 2022].

HISTORY: Laws, 2016, ch. 500, § 5, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 5, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 5, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-67-611. Application form [Repealed effective July 1, 2022].

HISTORY: Laws, 2016, ch. 500, § 6, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 6, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 6, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-67-613. Investigations, findings and posting of licenses [Repealed effective July 1, 2022].

HISTORY: Laws, 2016, ch. 500, § 7, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 7, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 7, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-67-615. Licensee duties; regulations; examinations of books and records [Repealed effective July 1, 2022].

HISTORY: Laws, 2016, ch. 500, § 8, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 8, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 8, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-67-617. Advertising, displaying or publishing false or misleading statements prohibited [Repealed effective July 1, 2022].

HISTORY: Laws, 2016, ch. 500, § 9, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 9, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 9, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-67-619. Fees and charges; method of computation [Repealed effective July 1, 2022].

HISTORY: Laws, 2016, ch. 500, § 10, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 10, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 10, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-67-621. Licensee to provide account holder with a written explanation of fees and charges [Repealed effective July 1, 2022].

HISTORY: Laws, 2016, ch. 500, § 11, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 11, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 11, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-67-623. Suspending or revoking license; reinstatement; notice to law enforcement [Repealed effective July 1, 2022].

HISTORY: Laws, 2016, ch. 500, § 12, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 12, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 12, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-67-625. Investigative powers and examinations [Repealed effective July 1, 2022].

HISTORY: Laws, 2016, ch. 500, § 13, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 13, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 13, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-67-627. Engaging in business without license; penalty [Repealed effective July 1, 2022].

HISTORY: Laws, 2016, ch. 500, § 14, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 14, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 14, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-67-629. Violations; criminal and civil penalties; enforcement; order to refrain; injunctions; bond forfeiture [Repealed effective July 1, 2022].

HISTORY: Laws, 2016, ch. 500, § 15, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 15, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 15, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this

supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-67-631. Severability.

HISTORY: Laws, 2016, ch. 500, § 16, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 16, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 16, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-67-633. Municipal ordinances [Repealed effective July 1, 2022].

HISTORY: Laws, 2016, ch. 500, § 17, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 17, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 17, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-67-635. Commissioner employees and funds authorized for enforcement [Repealed effective July 1, 2022].

HISTORY: Laws, 2016, ch. 500, § 18, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 18, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 18, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-67-637. Liability of licensees [Repealed effective July 1, 2022].

HISTORY: Laws, 2016, ch. 500, § 19, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 404, § 19, eff from and after July 1, 2018.

Editor's Notes — This section was reenacted without change by Laws of 2018, ch. 404, § 19, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

For repeal of this section, see § 75-67-639.

Amendment Notes — The 2018 amendment reenacted the section without change.

§ 75-67-639. Repeal of Sections 75-67-601 through 75-67-639, and Sections 75-67-403 and 75-67-505 [Repealed effective July 1, 2022].

Sections 75-67-601 through 75-67-639, and Sections 75-67-403 and 75-67-505, shall stand repealed on July 1, 2022.

HISTORY: Laws, 2018, ch. 404, § 22, eff from and after July 1, 2018.

CHAPTER 71.

MISSISSIPPI SECURITIES ACT OF 2010

Article 3.	Registration of securities and notice filing of federal covered securities.	75-71-301
Article 4.	Broker-dealers, agents, investment advisers, investment adviser representatives, and federal covered investment advisers.	75-71-401
Article 7.	Transition.	75-71-701

ARTICLE 3.

REGISTRATION OF SECURITIES AND NOTICE FILING OF FEDERAL COVERED SECURITIES.

Sec.
75-71-305. Securities registration filings.
75-71-310. Filing fees.

§ 75-71-305. Securities registration filings.

(a) **Who may file.** A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this chapter.

(b) **Filing fee.** A person filing a registration statement shall pay a filing fee as set forth in Section 75-71-310. This fee shall be nonrefundable.

(c) **Status of offering.** A registration statement filed under Section 75-71-303 or 75-71-304 must specify:

(1) The amount of securities to be offered in this state;

(2) The states in which a registration statement or similar record in connection with the offering has been or is to be filed; and

(3) Any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission, or a court.

(d) **Incorporation by reference.** A record filed under this chapter or the predecessor act within five (5) years preceding the filing of a registration

statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(e) **Nonissuer distribution.** In the case of a nonissuer distribution, information or a record may not be required under subsection (i) or Section 75-71-304, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(f) **Escrow and impoundment.** A rule adopted or order issued under this chapter may require as a condition of registration that a security issued within the previous five (5) years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this chapter, but the administrator may not reject a depository institution solely because of its location in another state.

(g) **Form of subscription.** A rule adopted or order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the rule or order, which may not be longer than five (5) years.

(h) **Effective period.** Except while a stop order is in effect under Section 75-71-306, a registration statement is effective for one (1) year after its effective date, or for any longer period designated in an order under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one (1) year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.

(i) **Periodic reports.** While a registration statement is effective, a rule adopted or order issued under this chapter may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

(j) **Posteffective amendments.** A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the administrator so orders. A posteffective amendment relates back

to the date of the offering of the additional securities being registered if, within one (1) year after the date of the sale, the amendment is filed and the additional registration fee is paid.

HISTORY: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010; Laws, 2020, ch. 360, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (b), deleted "except as provided in Section 75-71-310" from the end; and in (j), deleted the former third sentence, which read: "If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee calculated in the manner specified in Section 75-71-310, with respect to the additional securities proposed to be offered."

§ 75-71-310. Filing fees.

(a) **Required fees for notice filing for federal covered securities under Section 18(b)(2).** The initial filing fee for a notice filing with respect to a federal covered security described in subsection (a) of Section 75-71-302 is One Thousand Dollars ($1,000.00).

(b) **Required fees for notice filings for federal covered securities.** The filing fee for a notice filing with respect to a security that is a federal covered security described in Section 75-71-302(c) and (e) is Three Hundred Dollars ($300.00). The fee for a late filing, which is an additional fee, is one percent (1%) of the dollar amount of the offering sold in the state up to a maximum of Five Thousand Dollars ($5,000.00).

(c) **Required fees for securities registration filings under Section 75-71-305.** The filing fee for a registration statement under Section 75-71-305 is One Thousand Dollars ($1,000.00).

(d) **Renewals.** The fee for any renewal required under this chapter or rule of the administrator is Three Hundred Dollars ($300.00).

(e) **Termination or Withdrawal.** The fee for filing a notification of completion, termination, or withdrawal of an offering required under this chapter or rule of the administrator if Fifty Dollars ($50.00).

HISTORY: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010; Laws, 2016, ch. 321, § 2, eff from and after July 1, 2016; Laws, 2020, ch. 360, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (a), deleted "one-tenth (1/10) of one percent (1%) of the dollar amount of the offering to be registered with a minimum fee of Three Hundred Dollars ($300.00) and a maximum fee of" and the last sentence, which read: "The renewal fee for a notice filing with respect to a federal covered security described in subsection (a) of Section 75-71-302 is one-tenth (1/10) of one percent (1%) of the amount sold in the state with a minimum fee of Three Hundred Dollars ($300.00) and a maximum fee of One Thousand Dollars ($1,000.00)"; in (b), substituted "described in Section 75-71-302(c) and (e)" for "under the Securities Act of 1933 (15 USC Section 77r)"; in (c), deleted "one-tenth (1/10) of one percent (1%) of the dollar amount of the offering to be registered with a minimum fee of Three Hundred Dollars ($300.00) and a maximum fee of" and deleted (2), which read: "The filing fee for an amendment to a registration statement under Section 75-71-305 to register additional securities shall be

calculated in the manner specified in paragraph (1) with respect to the additional securities proposed to be offered"; and added (d) and (e).

ARTICLE 4.

BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS.

Sec.

75-71-402. Agent registration requirement and exemptions.
75-71-412. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration.
75-71-413. Prevention of financial exploitation of vulnerable persons; certain broker-dealers and investment advisers required to file report under Mississippi Vulnerable Persons Act must forward copy of report to administrator; initiation of internal review of suspected financial exploitation.
75-71-415 through 75-71-431. Repealed.

§ 75-71-402. Agent registration requirement and exemptions.

(a) **Registration requirement.** It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under subsection (b).

(b) **Exemptions from registration.** The following individuals are exempt from the registration requirement of subsection (a):

(1) An individual who represents a broker-dealer in effecting transactions in this state limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 USC Section 78o(h)(2));

(2) An individual who represents a broker-dealer that is exempt under Section 75-71-401(b) or 75-71-401(d);

(3) An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(4) An individual who represents an issuer and who effects transactions in the issuer's securities exempted by Section 75-71-202, other than Section 75-71-202(11) and (14);

(5) An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 USC Section 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(6) An individual who represents a broker-dealer registered in this state under Section 75-71-401(a) or exempt from registration under Section 75-71-401(b) in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of One Hundred Million Dollars ($100,000,000.00) acting for the account of others pursuant to discretionary authority in a signed record;

(7) An individual who represents an issuer in connection with the purchase of the issuer's own securities;

(8) An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or

(9) Any other individual exempted by rule adopted or order issued under this chapter.

(c) **Registration effective only while employed or associated.** The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer that is offering, selling, or purchasing its securities in this state.

(d) **Limit on employment or association.** It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).

(e) **Limit on affiliations.** An individual may not act as an agent for more than one (1) broker-dealer or one (1) issuer at a time, unless the broker-dealer or the issuer for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this chapter.

HISTORY: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (b)(1) by substituting "78o(h)(2)" for "78(h)(2)" The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

§ 75-71-412. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration.

(a) **Disciplinary conditions-applicants.** If the administrator finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(b) **Disciplinary conditions-registrants.** If the administrator finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may revoke, suspend, condition, or limit the

registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser. However, the administrator may not:

(1) Institute a revocation or suspension proceeding under this subsection (b) based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than one (1) year after the date of the order on which it is based; or

(2) Under subsection (d)(5)(A) or (B), issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this state.

(c) **Disciplinary penalties-registrants.** If the administrator finds that the order is in the public interest and subsection (d)(1) through (6), (8), (9), (10), (12) or (13) authorizes the action, an order under this chapter may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of the amount specified in Section 75-71-613 for each violation on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

(d) **Grounds for discipline.** A person may be disciplined under subsections (a) through (c) if the person:

(1) Has filed an application for registration in this state under this chapter or the predecessor act within the previous ten (10) years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) Willfully violated or willfully failed to comply with this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous fifteen (15) years; for purposes of an ongoing failure to supervise, each twelve-month period or less of the conduct is a separate violation of this subsection, and if the person has failed to supervise more than one (1) individual at a time during the twelve (12) consecutive months' time period, then it shall be a separate violation of this subsection for each individual that the person failed to supervise during the applicable time period;

(3) Has been convicted of a felony or within the previous ten (10) years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(4) Is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this chapter or the predecessor act, a state, the Securities and Exchange Commission, or the United States

from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(5) Is the subject of an order, issued after notice and opportunity for hearing by:

(A) The securities or other financial services regulator of a state or the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;

(B) The securities regulator of a state or the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;

(C) The Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;

(D) A court adjudicating a United States Postal Service fraud order;

(E) The insurance regulator of a state denying, suspending, or revoking registration as an insurance agent; or

(F) A depository institution or financial services regulator suspending or barring the person from the depository institution or other financial services business;

(6) Is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission; the Federal Trade Commission; a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;

(7) Is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the administrator may not enter an order against an applicant or registrant under this subsection (d) without a finding of insolvency as to the applicant or registrant;

(8) Refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under Section 75-71-411(d) or refuses access to a registrant's office to conduct an audit or inspection under Section 75-71-411(d);

(9) Has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous fifteen (15) years;

(10) Has not paid the proper filing fee within thirty (30) days after having been notified by the administrator of a deficiency, but the administrator shall vacate an order under this subsection (d) when the deficiency is corrected;

(11) After notice and opportunity for a hearing, has been found within the previous ten (10) years:

(A) By a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(B) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or

(C) To have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

(12) Is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;

(13) Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten (10) years; or

(14) Is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this subsection if the individual has successfully completed all examinations required by subsection (e). The administrator may require an applicant for registration under Section 75-71-402 or 75-71-404 who has not been registered in a state within the two (2) years preceding the filing of an application in this state to successfully complete an examination.

(e) **Examinations.** A rule adopted or order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, an examination as to an individual and a rule adopted under this chapter may waive, in whole or in part, an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) **Summary process.** The administrator may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the

administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator within thirty (30) days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) **Procedural requirements.** An order issued may not be issued under this section, except under subsection (f), without:

(1) Appropriate notice to the applicant or registrant;

(2) Opportunity for hearing; and

(3) Findings of fact and conclusions of law in a record in accordance with the administrative hearing procedures set forth in the rules.

(h) **Control person liability.** A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections (a) through (c) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(i) **Limit on investigation or proceeding.** The administrator may not institute a proceeding under subsection (a), (b), or (c) based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one (1) year after the administrator actually acquires knowledge of the material facts.

HISTORY: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010; Laws, 2017, ch. 349, § 1, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment rewrote (d)(2), which read: "Willfully violated or willfully failed to comply with this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous ten (10) years"; and substituted "fifteen (15) years" for "ten (10) years" in (d)(9).

§ 75-71-413. Prevention of financial exploitation of vulnerable persons; certain broker-dealers and investment advisers required to file report under Mississippi Vulnerable Persons Act must forward copy of report to administrator; initiation of internal review of suspected financial exploitation.

(a) A broker-dealer registered or required to be registered under this chapter or an investment adviser registered or required to be registered under this chapter that is required to file a report with the Department of Human Services under the Mississippi Vulnerable Persons Act, Section 43-47-1 et seq., shall immediately forward a copy of the report to the administrator and may

notify any third party reasonably associated with the customer of the suspected financial exploitation, or any other party permitted by state or federal laws or regulations, the rules of a self-regulatory organization or by customer agreement.

(b) If the broker-dealer registered or required to be registered under this chapter or the investment adviser registered or required to be registered under this chapter reasonably believes that a requested transaction may result in financial exploitation of its customer, that person may delay a transaction not to exceed fifteen (15) business days. If the transaction is delayed, the person shall, within two (2) business days, notify the administrator and all parties authorized to transact business on or to view the account subject to the delay. The broker-dealer or investment adviser shall immediately initiate an internal review of the suspected or attempted financial exploitation of the customer. The broker-dealer or investment advisor shall provide the administrator and the Department of Human Services with an update on the investigation upon request.

(c) Any delay of a transaction as authorized by this section will expire upon the sooner of:

(1) A determination by the broker-dealer or investment adviser, and the administrator, that the transaction will not result in financial exploitation of the eligible adult; or

(2) Fifteen (15) business days, unless the administrator requests that the broker-dealer or investment adviser extend the delay, in which case the delay shall be extended for an additional ten (10) days unless otherwise extended or terminated in accordance with paragraph (3).

(3) The Administrator or the Department of Human Services may petition a court of competent jurisdiction to enter an order extending or terminating the delay of the transaction.

(d) Disclosures and notifications of transaction delays shall not be made to any third party who is suspected of financial exploitation or other abuse.

(e) A person that makes disclosures or delays transactions under this section shall be immune from any administrative or civil liability that might otherwise arise from compliance with this section or activity authorized by this section.

(f) A person who fails to comply with subsection (a) of this section shall be subject to Section 43-47-7(1)(c) of the Mississippi Vulnerable Persons Act.

HISTORY: Laws, 2017, ch. 392, § 1, eff from and after July 1, 2017.

Editor's Notes — A former § 75-71-413 [Laws, 1981, ch. 521, § 304, effective from and after July 1, 1981; Repealed by Laws, 2009, ch. 582, § 2, effective from and after January 1, 2010], pertained to permitting the omission of information or document from the registration statement.

§§ 75-71-415 through 75-71-431. Repealed.

Repealed by Laws of 2009, ch. 582, § 2, effective from and after January 1, 2010.

§ 75-71-415 [Laws, 1981, ch. 521, § 304, eff from and after July 1, 1981.]
§ 75-71-417 [Laws, 1981, ch. 521, § 304, eff from and after July 1, 1981.]
§ 75-71-419 [Laws, 1981, ch. 521, § 304, eff from and after July 1, 1981.]
§ 75-71-421 [Laws, 1981, ch. 521, § 304; Laws, 1990, ch. 352, § 15; Laws, 1997, ch. 480, § 15, eff from and after passage (approved March 27, 1997).]
§ 75-71-423 [Laws, 1981, ch. 521, § 304, eff from and after July 1, 1981.]
§ 75-71-425 [Laws, 1981, ch. 521, § 305, eff from and after July 1, 1981.]
§ 75-71-427 [Laws, 1981, ch. 521, § 305, eff from and after July 1, 1981.]
§ 75-71-429 [Laws, 1981, ch. 521, § 305, eff from and after July 1, 1981.]
§ 75-71-431 [Laws, 1981, ch. 521, § 305, eff from and after July 1, 1981.]

Editor's Notes — Former § 75-71-415 provided certain information was not to be required in nonissuer distributions. Present similar provisions are found in § 75-71-305.

Former § 75-71-417 pertained to conditions imposable on registrations by qualification or coordination. Present similar provisions are found in § 75-71-305.

Former § 75-71-419 pertained to the duration of registration statements. Present similar provisions are found in § 75-71-305.

Former § 75-71-421 pertained to reports that may be required while registration statement is effective. Present similar provisions are found in § 75-71-305.

Former § 75-71-423 pertained to amendments to registration statements to increase the amount of the offering of certain securities. Present similar provisions are found in § 75-71-305.

Former § 75-71-425 pertained to the denial, suspension or revocation of the effectiveness of a registration statement and stop orders. Present similar provisions are found in § 75-71-306.

Former § 75-71-427 pertained to summary temporary postponement or suspension of the effectiveness of registration statements. Present similar provisions are found in § 75-71-306.

Former § 75-71-429 pertained to notice, hearing and written findings and conclusions for stop order. Present similar provisions are found in § 75-71-306.

Former § 75-71-431 pertained to vacation or modification of stop orders. Present similar provisions are found in § 75-71-306.

ARTICLE 5.

FRAUD AND LIABILITIES.

§ 75-71-501. General fraud.

JUDICIAL DECISIONS

ANALYSIS

I. Under Current Law.

1. In general.
2. Authority of Secretary of State.

I. Under Current Law.

1. In general.

As with subsection (2), subsection (3) contains no scienter requirement; the question is simply whether the actor's conduct operated as a fraud or deceit. Watkins Dev., LLC v. Hosemann, 214 So. 3d 1050, 2017 Miss. LEXIS 74 (Miss. 2017).

Substantial evidence supported the finding of the Mississippi Secretary of State that a contractor engaged in an act, practice, or course of business that oper-

ated as a fraud or deceit upon another person because the contractor used bond proceeds for an unrelated project; the contractor used proceeds from the bond sale, held in trust, to purchase property for the unrelated project. Watkins Dev., LLC v. Hosemann, 214 So. 3d 1050, 2017 Miss. LEXIS 74 (Miss. 2017).

Substantial evidence supported the finding that a contractor's alleged misappropriation was tied to his alleged misrepresentations in a private placement memorandum, bond-purchase contract, and loan agreement because the misappropriation constituted part of a larger fraudulent scheme; the contractor used proceeds from the bond sale to purchase property for an unrelated project and never provided any indication to the trustee that he was withdrawing funds for that purpose. Watkins Dev., LLC v. Hosemann, 214 So. 3d 1050, 2017 Miss. LEXIS 74 (Miss. 2017).

Substantial evidence supported the finding that a contractor's representation that bond proceeds would be used to finance a project and his failure to disclose that some of the proceeds would be used on another project occurred in connection with the bond sale because the contractor was instrumental in preparing a private placement memorandum to obtain the bond sale, he was a party to the bond-purchase contract, and he was a party to the loan agreement to access the proceeds from that sale. Watkins Dev., LLC v. Hosemann, 214 So. 3d 1050, 2017 Miss. LEXIS 74 (Miss. 2017).

Lawful securities transaction followed by the misappropriation of the funds accrued therefrom is not enough because the statute addresses only frauds related to the offer, sale, or purchase itself; that said, the later misappropriation of funds may serve as circumstantial, though not dispositive, evidence that the misappropriation occurred as part of a larger fraudulent scheme relating to the offer, sale, or purchase. Watkins Dev., LLC v. Hosemann, 214 So. 3d 1050, 2017 Miss. LEXIS 74 (Miss. 2017).

As with subsection (2), subsection (3) contains no scienter requirement; the question is simply whether the actor's conduct operated as a fraud or deceit. Watkins Dev., LLC v. Hosemann, 214 So. 3d 1050, 2017 Miss. LEXIS 74 (Miss. 2017).

Chancellor erred in setting aside a finding that the developer failed to disclose the significant financial obligations resulting from the development agreement where the evidence showed that the financial obligation was significant and material, and its omission rendered the documents misleading and false. Watkins Dev., LLC v. Hosemann, 214 So. 3d 1101, 2016 Miss. App. LEXIS 434 (Miss. Ct. App. 2016), aff'd in part and rev'd in part, 214 So. 3d 1050, 2017 Miss. LEXIS 74 (Miss. 2017).

Chancellor properly found that a transfer of bond proceeds violated Miss. Code Ann. § 75-71-501 where the developer failed to disclose its intention to use the proceeds to purchase property for an unrelated development project, and although it was owed money under a development agreement, the actual transfer was accomplished without any documentation supporting its validity. Watkins Dev., LLC v. Hosemann, 214 So. 3d 1101, 2016 Miss. App. LEXIS 434 (Miss. Ct. App. 2016), aff'd in part and rev'd in part, 214 So. 3d 1050, 2017 Miss. LEXIS 74 (Miss. 2017).

2. Authority of Secretary of State.

Secretary of State had authority to find that a developer violated Miss. Code Ann. § 75-71-501(2) by failing to disclose the significant financial liability set forth in a development agreement where the definition of general fraud included an omission of a material fact, and the determination of whether the developer's omission of the development agreement, which included another entity's significant financial liability, from the documents constituted a question of fact. Watkins Dev., LLC v. Hosemann, 214 So. 3d 1101, 2016 Miss. App. LEXIS 434 (Miss. Ct. App. 2016), aff'd in part and rev'd in part, 214 So. 3d 1050, 2017 Miss. LEXIS 74 (Miss. 2017).

ARTICLE 6.

ADMINISTRATION AND JUDICIAL REVIEW.

§ 75-71-609. Judicial review.

JUDICIAL DECISIONS

1. In general.

Substantial evidence supported the finding of the Mississippi Secretary of State that a contractor engaged in an act, practice, or course of business that operated as a fraud or deceit upon another person because the contractor used bond proceeds for an unrelated project; the contractor used proceeds from the bond sale, held in trust, to purchase property for the unrelated project. Watkins Dev., LLC v. Hosemann, 214 So. 3d 1050, 2017 Miss. LEXIS 74 (Miss. 2017).

Substantial evidence supported the finding that a contractor's alleged misappropriation was tied to his alleged misrepresentations in a private placement memorandum, bond-purchase contract, and loan agreement because the misappropriation constituted part of a larger fraudulent scheme; the contractor used proceeds from the bond sale to purchase property for an unrelated project and never provided any indication to the trustee that he was withdrawing funds for that purpose. Watkins Dev., LLC v. Hosemann, 214 So. 3d 1050, 2017 Miss. LEXIS 74 (Miss. 2017).

Substantial evidence supported the finding that a contractor's representation that bond proceeds would be used to finance a project and his failure to disclose that some of the proceeds would be used on another project occurred in connection with the bond sale because the contractor was instrumental in preparing a private placement memorandum to obtain the bond sale, he was a party to the bond-purchase contract, and he was a party to the loan agreement to access the proceeds from that sale. Watkins Dev., LLC v. Hosemann, 214 So. 3d 1050, 2017 Miss. LEXIS 74 (Miss. 2017).

Secretary of State had authority to find that a developer violated Miss. Code Ann. § 75-71-501(2) by failing to disclose the significant financial liability set forth in a development agreement where the definition of general fraud included an omission of a material fact, and the determination of whether the developer's omission of the development agreement, which included another entity's significant financial liability, from the documents constituted a question of fact. Watkins Dev., LLC v. Hosemann, 214 So. 3d 1101, 2016 Miss. App. LEXIS 434 (Miss. Ct. App. 2016), aff'd in part and rev'd in part, 214 So. 3d 1050, 2017 Miss. LEXIS 74 (Miss. 2017).

ARTICLE 7.

TRANSITION.

Sec.

75-71-701. Application of chapter to existing proceeding and existing rights and duties.

§ 75-71-701. Application of chapter to existing proceeding and existing rights and duties.

(a) **Applicability of predecessor chapter to pending proceedings and existing rights.** The predecessor chapter exclusively governs all actions or proceedings that are pending on January 1, 2010, or may be instituted on

the basis of conduct occurring before January 1, 2010, but a private civil action may not be maintained to enforce any liability under the predecessor chapter unless instituted within any period of limitation that applied when the cause of action accrued or within five (5) years after January 1, 2010, whichever is earlier. This time limitation shall not apply to a civil enforcement action or an administrative enforcement action instituted by the administrator under Section 75-71-603 or Section 75-71-604.

(b) **Continued effectiveness under predecessor chapter.** All effective registrations under the predecessor chapter, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no-action determinations, and conditions imposed on the registrations under the predecessor chapter remain in effect while they would have remained in effect if this chapter had not been enacted. They are considered to have been filed, issued, or imposed under this chapter, but are exclusively governed by the predecessor chapter.

(c) **Applicability of predecessor chapter to offers or sales.** The predecessor chapter exclusively applies to an offer or sale made within one (1) year after January 1, 2010, pursuant to an offering made in good faith before January 1, 2010, on the basis of an exemption available under the predecessor chapter.

(d) For the purposes of this chapter, "predecessor chapter" means Chapter 71 of Title 75, Mississippi Code of 1972, as it existed on December 31, 2009.

HISTORY: Laws, 2009, ch. 528, § 1; Laws, 2017, ch. 349, § 2, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment, in (a), inserted "private" in the first sentence, and added the last sentence.

CHAPTER 74.

YOUTH CAMPS

§ 75-74-11. Restrictions on operation or sponsorship of youth camps; license requirement; renewal of license.

HISTORY: Laws, 1977, ch. 459, § 6; Laws, 1979, ch. 445, § 12; Laws, 1986, ch. 371, § 15; Laws, 2000, ch. 365, § 2; Laws, 2008, ch. 493, § 1; Laws, 2016, ch. 510, § 64, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 64, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 473, § 64. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

Amendment Notes — The 2020 amendment reenacted the section without change.

CHAPTER 76.

MISSISSIPPI GAMING CONTROL ACT

General Provisions. 75-76-1
Mississippi Gaming Commission; Executive Director. 75-76-7
Deposit of Fees. 75-76-129

GENERAL PROVISIONS

Sec.
75-76-5. Definitions.

§ 75-76-5. Definitions.

As used in this chapter, unless the context requires otherwise:

(a) "Applicant" means any person who has applied for or is about to apply for a state gaming license, registration or finding of suitability under the provisions of this chapter or approval of any act or transaction for which approval is required or permitted under the provisions of this chapter.

(b) "Application" means a request for the issuance of a state gaming license, registration or finding of suitability under the provisions of this chapter or for approval of any act or transaction for which approval is required or permitted under the provisions of this chapter but does not include any supplemental forms or information that may be required with the application.

(c) "Associated equipment" means any equipment or mechanical, electromechanical or electronic contrivance, component or machine used remotely or directly in connection with gaming or with any game, race book or sports pool that would not otherwise be classified as a gaming device, including dice, playing cards, links which connect to progressive slot machines, equipment which affects the proper reporting of gross revenue, computerized systems of betting at a race book or sports pool, computerized systems for monitoring slot machines, and devices for weighing or counting money.

(d) "Chairman" means the Chairman of the Mississippi Gaming Commission except when used in the term "Chairman of the State Tax Commission." "Chairman of the State Tax Commission" or "commissioner" means the Commissioner of Revenue of the Department of Revenue.

(e) "Commission" or "Mississippi Gaming Commission" means the Mississippi Gaming Commission.

(f) "Commission member" means a member of the Mississippi Gaming Commission.

(g) "Credit instrument" means a writing which evidences a gaming debt owed to a person who holds a license at the time the debt is created, and includes any writing taken in consolidation, redemption or payment of a prior credit instrument.

(h) "Enforcement division" means a particular division supervised by the executive director that provides enforcement functions.

(i) "Establishment" means any premises wherein or whereon any gaming is done.

(j) "Executive director" means the Executive Director of the Mississippi Gaming Commission.

(k) Except as otherwise provided by law, "game," or "gambling game" means any banking or percentage game played with cards, with dice or with any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value, including, without limiting, the generality of the foregoing, faro, monte, roulette, keno, fan-tan, twenty-one, blackjack, seven-and-a-half, big injun, klondike, craps, poker, chuck-a-luck (dai shu), wheel of fortune, chemin de fer, baccarat, pai gow, beat the banker, panguingui, slot machine, or any other game or device approved by the commission. However, "game" or "gambling game" shall not include bingo games or raffles which are held pursuant to the provisions of Section 97-33-51, or the illegal gambling activities described in Section 97-33-8.

The commission shall not be required to recognize any game hereunder with respect to which the commission determines it does not have sufficient experience or expertise.

(*l*) "Gaming" or "gambling" means to deal, operate, carry on, conduct, maintain or expose for play any game as defined in this chapter.

(m) "Gaming device" means any mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming or any game which affects the result of a wager by determining win or loss. The term includes a system for processing information which can alter the normal criteria of random selection, which affects the operation of any game, or which determines the outcome of a game. The term does not include a system or device which affects a game solely by stopping its operation so that the outcome remains undetermined, and does not include any antique coin machine as defined in Section 27-27-12.

(n) "Gaming employee" means any person connected directly with the operation of a gaming establishment licensed to conduct any game, including:

(i) Boxmen;

(ii) Cashiers;

(iii) Change personnel;

(iv) Counting room personnel;

(v) Dealers;

(vi) Floormen;

(vii) Hosts or other persons empowered to extend credit or complimentary services;

(viii) Keno runners;

(ix) Keno writers;

(x) Machine mechanics;

(xi) Security personnel;
(xii) Shift or pit bosses;
(xiii) Shills;
(xiv) Supervisors or managers; and
(xv) Ticket writers.

The term "gaming employee" also includes employees of manufacturers or distributors of gaming equipment within this state whose duties are directly involved with the manufacture, repair or distribution of gaming equipment.

"Gaming employee" does not include bartenders, cocktail waitresses or other persons engaged in preparing or serving food or beverages unless acting in some other capacity.

(o) "Gaming license" means any license issued by the state which authorizes the person named therein to engage in gaming.

(p) "Gross revenue" means the total of all of the following, less the total of all cash paid out as losses to patrons and those amounts paid to purchase annuities to fund losses paid to patrons over several years by independent financial institutions:

(i) Cash received as winnings;

(ii) Cash received in payment for credit extended by a licensee to a patron for purposes of gaming; and

(iii) Compensation received for conducting any game in which the licensee is not party to a wager.

For the purposes of this definition, cash or the value of noncash prizes awarded to patrons in a contest or tournament are not losses.

The term does not include:

(i) Counterfeit money or tokens;

(ii) Coins of other countries which are received in gaming devices;

(iii) Cash taken in fraudulent acts perpetrated against a licensee for which the licensee is not reimbursed; or

(iv) Cash received as entry fees for contests or tournaments in which the patrons compete for prizes.

(q) "Hearing examiner" means a member of the Mississippi Gaming Commission or other person authorized by the commission to conduct hearings.

(r) "Investigation division" means a particular division supervised by the executive director that provides investigative functions.

(s) "License" means a gaming license or a manufacturer's, seller's or distributor's license.

(t) "Licensee" means any person to whom a valid license has been issued.

(u) "License fees" means monies required by law to be paid to obtain or continue a gaming license or a manufacturer's, seller's or distributor's license.

(v) "Licensed gaming establishment" means any premises licensed pursuant to the provisions of this chapter wherein or whereon gaming is done.

(w) "Manufacturer's," "seller's" or "distributor's" license means a license issued pursuant to Section 75-76-79.

(x) "Navigable waters" shall have the meaning ascribed to such term under Section 27-109-1.

(y) "Operation" means the conduct of gaming.

(z) "Party" means the Mississippi Gaming Commission and any licensee or other person appearing of record in any proceeding before the commission; or the Mississippi Gaming Commission and any licensee or other person appearing of record in any proceeding for judicial review of any action, decision or order of the commission.

(aa) "Person" includes any association, corporation, firm, partnership, trust or other form of business association as well as a natural person.

(bb) "Premises" means land, together with all buildings, improvements and personal property located thereon, and includes all parts of any vessel or cruise vessel.

(cc) "Race book" means the business of accepting wagers upon the outcome of any event held at a track which uses the pari-mutuel system of wagering.

(dd) "Regulation" means a rule, standard, directive or statement of general applicability which effectuates law or policy or which describes the procedure or requirements for practicing before the commission. The term includes a proposed regulation and the amendment or repeal of a prior regulation but does not include:

(i) A statement concerning only the internal management of the commission and not affecting the rights or procedures available to any licensee or other person;

(ii) A declaratory ruling;

(iii) An interagency memorandum;

(iv) The commission's decision in a contested case or relating to an application for a license; or

(v) Any notice concerning the fees to be charged which are necessary for the administration of this chapter.

(ee) "Respondent" means any licensee or other person against whom a complaint has been filed with the commission.

(ff) "Slot machine" means any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tokens or anything of value, whether the payoff is made automatically from the machine or in any other manner. The term does not include any antique coin machine as defined in Section 27-27-12.

(gg) "Sports pool" means the business of accepting wagers on collegiate or professional sporting events or athletic events, by any system or method of wagering other than the system known as the "pari-mutuel method of wagering."

(hh) "State Tax Commission" or "department" means the Department of Revenue of the State of Mississippi.

(ii) "Temporary work permit" means a work permit which is valid only for a period not to exceed ninety (90) days from its date of issue and which is not renewable.

(jj) "Vessel" or "cruise vessel" shall have the meanings ascribed to such terms under Section 27-109-1.

(kk) "Work permit" means any card, certificate or permit issued by the commission, whether denominated as a work permit, registration card or otherwise, authorizing the employment of the holder as a gaming employee. A document issued by any governmental authority for any employment other than gaming is not a valid work permit for the purposes of this chapter.

(*ll*) "School or training institution" means any school or training institution which is licensed by the commission to teach or train gaming employees pursuant to Section 75-76-34.

(mm) "Cheat" means to alter the selection of criteria that determine:

(i) The rules of a game; or

(ii) The amount or frequency of payment in a game.

(nn) "Promotional activity" means an activity or event conducted or held for the purpose of promoting or marketing the individual licensed gaming establishment that is engaging in the promotional activity. The term includes, but is not limited to, a game of any kind other than as defined in paragraph (k) of this section, a tournament, a contest, a drawing, or a promotion of any kind.

HISTORY: Laws, 1990 Ex Sess, ch. 45, § 3; Laws, 1991, ch. 543, § 2; Laws, 1992, ch. 371, § 4; Laws, 1993, ch. 488, § 1; Laws, 2009, ch. 384, § 2; Laws, 2009, ch. 492, § 141; Laws, 2013, ch. 410, § 5, eff from and after July 1, 2013; Laws, 2017, ch. 336, § 10, eff from and after July 1, 2017.

Editor's Notes — Laws of 2017, ch. 336, § 12, effective March 13, 2017, provides:

"SECTION 12. Application for licensure as a fantasy contest operator may be made at any time."

Laws of 2017, ch. 336, § 13, provides:

"SECTION 13. Section 12 of this act is not included to be codified and is effective from and after its passage (approved March 13, 2017); the remainder of this act shall take effect and be in force from and after July 1, 2017."

Amendment Notes — The 2017 amendment substituted "wagers on collegiate or professional sporting events or athletic events" for "wagers on sporting events except for athletic events" in (gg).

JUDICIAL DECISIONS

ANALYSIS

2. Game.
4. Construction with other laws.

2. Game.

Instruction stating that poker and keno were gambling games and could only be offered on the premises of a licensed gaming establishment fairly stated the applicable law and thus, created no injustice because poker and keno were explicitly illegal under Mississippi's gaming laws; those games could not be part of any

lawful marketing promotion, contest, prize, or sweepstakes under the "safe harbor" in Miss. Code Ann. § 97-33-8(5)(b). Moore v. State, — So. 3d —, 2020 Miss. App. LEXIS 391 (Miss. Ct. App. June 23, 2020).

4. Construction with other laws.

Exclusion in the Gaming Control Act, Miss. Code Ann. § 75-76-5, of the illegal gambling activities described in Miss. Code Ann. § 97-33-8 from its definition of "game" or "gambling games" simply clarify that § 97-33-8 contains its own defined terms in providing that the operation of Internet sweepstakes cafes is an illegal gambling activity under state law. Moore v. State, — So. 3d —, 2020 Miss. App. LEXIS 391 (Miss. Ct. App. June 23, 2020).

MISSISSIPPI GAMING COMMISSION; EXECUTIVE DIRECTOR

Sec.

75-76-33. Authority of commission to adopt, amend or repeal regulations; particular regulations specified; compliance with regulation prohibiting wagers by individuals, entities or groups not present; funding of agency expenses; deposit of monies into State General Fund.

§ 75-76-21. Power of executive director in pursuit of attainment of objectives and purposes of Gaming Control Act; costs of administration; authority to employ employees.

JUDICIAL DECISIONS

1. Gaming debts.

Mississippi Gaming Commission had jurisdiction over a casino's refusal to honor expired vouchers because the dispute was over gaming debts. Shriver v. Boyd Biloxi LLC, 281 So. 3d 63, 2019 Miss. App. LEXIS 12 (Miss. Ct. App. 2019).

§ 75-76-33. Authority of commission to adopt, amend or repeal regulations; particular regulations specified; compliance with regulation prohibiting wagers by individuals, entities or groups not present; funding of agency expenses; deposit of monies into State General Fund.

(1) The commission shall, from time to time, adopt, amend or repeal such regulations, consistent with the policy, objects and purposes of this chapter, as it may deem necessary or desirable in the public interest in carrying out the policy and provisions of this chapter. The commission shall comply with the Mississippi Administrative Procedures Law when adopting, amending or repealing any regulations authorized under this section or under any other provision of this chapter.

(2) These regulations shall, without limiting the general powers herein conferred, include the following:

(a) Prescribing the method and form of application which any applicant for a license or for a manufacturer's, seller's or distributor's license must

follow and complete before consideration of his application by the executive director or the commission.

(b) Prescribing the information to be furnished by any applicant or licensee concerning his antecedents, habits, character, associates, criminal record, business activities and financial affairs, past or present.

(c) Prescribing the information to be furnished by a licensee relating to his employees.

(d) Requiring fingerprinting of an applicant or licensee, and gaming employees of a licensee, or other methods of identification and the forwarding of all fingerprints taken pursuant to regulation of the Federal Bureau of Investigation.

(e) Prescribing the manner and procedure of all hearings conducted by the commission or any hearing examiner of the commission, including special rules of evidence applicable thereto and notices thereof.

(f) Requiring any applicant to pay all or any part of the fees and costs of investigation of such applicant as may be determined by the commission under paragraph (g) of this subsection (2).

(g) Prescribing the amounts of investigative fees only as authorized by regulations of the commission under paragraph (f) of this subsection, and collecting those fees. The commission shall adopt regulations setting the amounts of those fees at levels that will provide the commission with sufficient revenue, when combined with any other monies as may be deposited into the Mississippi Gaming Commission Fund created in Section 75-76-325, to carry out the provisions of this chapter without any state general funds. In calculating the amount of such fees, the commission shall:

(i) Attempt to set the fees at levels that will create a balance in the Mississippi Gaming Commission Fund that does not exceed, at the end of any state fiscal year, two percent (2%) of the projected amount of funds that will provide the commission with such sufficient revenue; and

(ii) Demonstrate the reasonableness of the relationship between a fee and the actual costs of the investigative activity for which the fee is being prescribed.

(h) Prescribing the manner and method of collection and payment of fees and issuance of licenses.

(i) Prescribing under what conditions a licensee may be deemed subject to revocation or suspension of his license.

(j) Requiring any applicant or licensee to waive any privilege with respect to any testimony at any hearing or meeting of the commission, except any privilege afforded by the Constitution of the United States or this state.

(k) Defining and limiting the area, games and devices permitted, and the method of operation of such games and devices, for the purposes of this chapter.

(*l*) Prescribing under what conditions the nonpayment of a gambling debt by a licensee shall be deemed grounds for revocation or suspension of his license.

(m) Governing the use and approval of gambling devices and equipment.

(n) Prescribing the qualifications of, and the conditions under which, attorneys, accountants and others are permitted to practice before the commission.

(o) Restricting access to confidential information obtained under this chapter and ensuring that the confidentiality of such information is maintained and protected.

(p) Prescribing the manner and procedure by which the executive director on behalf of the commission shall notify a county or a municipality wherein an applicant for a license desires to locate.

(q) Prescribing the manner and procedure for an objection to be filed with the commission and the executive director by a county or municipality wherein an applicant for a license desires to locate.

(3) Notwithstanding any other provision of law, each licensee shall be required to comply with the regulation that no wager may be placed by, or on behalf of, any individual or entity or group, not present on a licensed vessel or cruise vessel.

(4) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(5) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY: Laws, 1990 Ex Sess, ch. 45, § 17; Laws, 2010, ch. 431, § 1; Laws, 2016, ch. 459, § 5, eff from and after July 1, 2016; Laws, 2017, ch. 336, § 11, eff from and after July 1, 2017.

Editor's Notes — Laws of 2017, ch. 336, § 12, effective March 13, 2017, provides:

"SECTION 12. Application for licensure as a fantasy contest operator may be made at any time."

Laws of 2017, ch. 336, § 13, provides:

"SECTION 13. Section 12 of this act is not included to be codified and is effective from and after its passage (approved March 13, 2017); the remainder of this act shall take effect and be in force from and after July 1, 2017."

Amendment Notes — The 2017 amendment, in (3), substituted "regulation that" for "following regulations," deleted former (a), which read: "No wagering shall be allowed on the outcome of any athletic event, nor on any matter to be determined during an athletic event, nor on the outcome of any event, which does not take place on the premises," deleted the former (b) designation, and made a related stylistic change.

FINANCIAL AFFAIRS OF LICENSEES

§ 75-76-51. Commission to adopt regulations prescribing manner of computing and reporting winnings, compensation and gross revenues.

JUDICIAL DECISIONS

1. Expired vouchers.

Mississippi Gaming Commission's Executive Director did not exceed statutory authority by finding a casino's vouchers had expired because the vouchers met requirements the Executive Director had authority to promulgate. Shriver v. Boyd Biloxi LLC, 281 So. 3d 63, 2019 Miss. App. LEXIS 12 (Miss. Ct. App. 2019).

DISCIPLINARY ACTIONS

§ 75-76-121. Circuit court review of decision or order of commission; enforcement of decision or order not stayed.

JUDICIAL DECISIONS

1. In general.

Circuit court properly denied the Mississippi Gaming and Hospitality Association's motions to intervene in actions related to applications for gaming site approval where even if it was considered a party of record, Miss. Code Ann. § 75-76-121 required only that it be served a copy of the applicants' petition for judicial review, not that all parties of record be named either a respondent or appellee in a petition for review, and the Association agreed that it was not aggrieved by the decisions. Miss. Gaming & Hosp. Ass'n v. Diamondhead Real Estate, LLC, 265 So. 3d 135, 2019 Miss. LEXIS 26 (Miss. 2019).

Mississippi Gaming and Hospitality Association had no right to intervene in actions involving applications for gaming site approval as Miss. Code Ann. § 75-76-121(4) provided only permissive intervention. Miss. Gaming & Hosp. Ass'n v. Diamondhead Real Estate, LLC, 265 So. 3d 135, 2019 Miss. LEXIS 26 (Miss. 2019).

DEPOSIT OF FEES

Sec.
75-76-129. Deposit of taxes, fees, interest, etc. into General Fund.

§ 75-76-129. Deposit of taxes, fees, interest, etc. into General Fund.

[Through June 30, 2028, this section shall read as follows:]

(1) On or before the last day of each month all taxes, fees, interest, penalties, damages, fines or other monies collected by the Department of Revenue during that month under the provisions of this chapter, with the exception of (a) the local government fees imposed under Section 75-76-195, and (b) an amount equal to Three Million Dollars ($3,000,000.00) of the revenue collected pursuant to the fee imposed under Section 75-76-177(1)(c),

and (c) the revenue collected pursuant to the fee imposed under Section 75-76-177(1)(c) as a result of wagers on sporting events shall be paid by the Department of Revenue to the State Treasurer to be deposited in the State General Fund. The local government fees shall be distributed by the Department of Revenue pursuant to Section 75-76-197.

(2) An amount equal to Three Million Dollars ($3,000,000.00) of the revenue collected during that month pursuant to the fee imposed under Section 75-76-177(1)(c) shall be deposited by the Department of Revenue into the bond sinking fund created in Section 1(3) of Chapter 479, Laws of 2015.

(3) Revenue collected pursuant to the fee imposed under Section 75-76-177(1)(c) as a result of wagers on sporting events shall be deposited into the State Highway Fund to be used solely for the repair and maintenance of highways and bridges of the State of Mississippi. This revenue shall be used first for matching funds made available to the state for such purposes pursuant to any federal highway infrastructure program implemented after September 1, 2018.

[From and after July 1, 2028, this section shall read as follows:]

On or before the last day of each month all taxes, fees, interest, penalties, damages, fines or other monies collected by the Department of Revenue during that month under the provisions of this chapter, with the exception of (a) the local government fees imposed under Section 75-76-195, and (b) an amount equal to Three Million Dollars ($3,000,000.00) of the revenue collected pursuant to the fee imposed under Section 75-76-177(1)(c) shall be paid by the Department of Revenue to the State Treasurer to be deposited in the State General Fund. The local government fees shall be distributed by the Department of Revenue pursuant to Section 75-76-197. An amount equal to Three Million Dollars ($3,000,000.00) of the revenue collected during that month pursuant to the fee imposed under Section 75-76-177(1)(c) shall be deposited by the Department of Revenue into the bond sinking fund created in Section 1(3) of Chapter 479, Laws of 2015.

HISTORY: Laws, 1990 Ex Sess, ch. 45, § 65; Laws, 1994, ch. 557, § 42; Laws, 1994, ch. 565, § 2; Laws, 1997, ch. 562, § 3; Laws, 2002, ch. 582, § 2; Laws, 2004, ch. 595, § 23; Laws, 2005, 2nd Ex Sess, ch. 53, § 1; Laws, 2015, ch. 479, § 5, eff from and after July 1, 2015; Laws, 2018, 1st Ex Sess, ch. 1, § 11, eff from and after passage (approved August 29, 2018).

Editor's Notes — Laws of 2018, 1st Extraordinary Session, ch. 1, §§ 14 and 15, effective from and after August 29, 2018, provide:

"SECTION 14. This act shall be known and may be cited as the Mississippi Infrastructure Modernization Act of 2018.

"SECTION 15. Sections 5 and 6 of this act shall take effect and be in force from and after October 1, 2018, the remainder of this act shall take effect and be in force from and after its passage."

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective August 29, 2018, created two versions of the section; in the version effective through June 30, 2028, divided the former section into (1) and (2) and added (3), and in (1), inserted "and (c) the revenue...as a result of wagers on sporting events" in the first sentence.

ENFORCEMENT OF GAMING DEBTS NOT EVIDENCED BY CREDIT INSTRUMENT

§ 75-76-159. Resolution of claim by patron for payment of gaming debt not evidenced by credit instrument; investigation and decision of executive director.

Cross References — Failure to notify Mississippi Gaming Commission executive director or patron as provided in this section grounds for disciplinary action pursuant to § 97-33-315, see § 97-33-313.

FEES

§ 75-76-195. License fee based on gross revenues of licensee imposed by municipalities and counties; penalty for failure to pay fee.

JUDICIAL DECISIONS

1. County fee.

County did not show 2004 Miss. Private and Local Laws ch. 920, requiring the county to distribute portions of a gaming fee to a town and a school district, was unconstitutional because (1) Miss. Const. art. 4, § 87 did not apply as it related to the suspension of general laws, since the law applied to specific governmental entities for specific purposes, and, (2) if Miss. Const. art. 4, § 87 applied, the law did not suspend the operation of the general statutes of Miss. Code Ann. §§ 19-3-40(3)(f) or 75-76-195, as a law authorized the distributions and 2004 Miss. Private and Local Laws ch. 920 and Miss. Code Ann. § 75-76-195 were separate statutes authorizing the imposition of a fee. Tunica County v. Town of Tunica, 227 So. 3d 1007, 2017 Miss. LEXIS 179 (Miss. 2017).